

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804
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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
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Court Reporters 7-189
Cleveland, Ohio 44113
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1 (In open court at 8:47 a.m.)

2 THE COURT: We can take up the exhibits for
3 Dr. Murphy and Dr. Choi.

4 It looks like the plaintiffs are offering two.

5 Any objection to either of these two?

6 Looks like the plaintiffs are offering two exhibits
7 with Dr. Murphy, 0166, the Case and Deaton article, and
8 17422, an e-mail.

9 Any objection to either of those?

10 MS. FUMERTON: So, Your Honor, we had just
11 exchanged exhibits last night. I apologize, I was just with
12 the next witness. Will we have till lunch just to make sure
13 we're on the same page?

14 THE COURT: All right. I don't have any from
15 the defendants.

16 MS. FUMERTON: Yeah, I have a list for you.

17 THE COURT: All right. There's a list of
18 exhibits for Dr. Choi, and it says no objections by the
19 plaintiffs.

20 MR. WEINBERGER: That's correct.

21 THE COURT: That's correct? All right. I can
22 read these into the record then.

23 03882A, 03886A, 03887A, 03896A, 04311A, 04313A,
24 04313B, 04320A, 04328A, 04335A, 04337A, 04339, 04340, 04341,
25 04342A, 04343A, 04346A, 04352A, 04363A, 04966, 04967, 04968,

1 all without objection.

2 Do plaintiffs have any for Dr. Choi?

3 MR. BUSH: Just to be perfectly clear, the
4 prefix for that should be CVS-MDL. I don't think you said
5 all that.

6 THE COURT: I don't know how these are all --
7 all right, if the prefix are on there or not.

8 MR. BUSH: They are.

9 THE COURT: All right. These are all CVS-MDL
10 then.

11 Do the plaintiffs have anything for Dr. Choi?

12 MR. WEINBERGER: No, Your Honor.

13 THE COURT: Okay. Fine. Then we'll take up
14 Dr. Murphy later.

15 MR. WEINBERGER: Your Honor, I'm not sure
16 where the record stands on this one from Harrington, which
17 was P-08415. My recollection is we had discussion about it
18 and that you were going to still consider it. This is
19 the --

20 THE COURT: Let me have the exhibit.

21 MR. WEINBERGER: 08415, Robert.

22 MS. FLEMING: You have it from yesterday,
23 Robert.

24 THE COURT: I thought I made a ruling on this.

25 Robert, what ruling was made on 08451?

1 I wrote that it was withdrawn.

2 MR. WEINBERGER: No, we didn't withdraw it.

3 THE COURT: Well, that's what -- you said you
4 weren't offering it then, so it was withdrawn.

5 MR. WEINBERGER: No, this was -- the objection
6 was that she didn't recognize it, but it was on -- but her
7 name is on it.

8 THE COURT: All right. I wrote down that it
9 was withdrawn.

10 So you are offering it?

11 MR. WEINBERGER: Yes. And slides -- or pages
12 27, 28 to 35, has her name on it as for Professional
13 Practices.

14 THE COURT: Refusals to fill, are those the
15 pages you're offering?

16 MR. WEINBERGER: I think it has to be in the
17 context of the entire PowerPoint, but I'm just pointing out
18 those pages because she's referenced there.

19 THE COURT: I'm looking at page 27. I don't
20 see --

21 MR. WEINBERGER: Slide 27, 28 to 35.

22 THE COURT: All I have is page numbers, so I
23 don't -- all right.

24 Where is the witness mentioned?

25 MS. FLEMING: Slide 27 of --

1 THE COURT: Slide 27 doesn't mean anything to
2 me. All I have is page numbers here.

3 MR. LANIER: Your Honor, if you'll hand it to
4 me, I'll find it.

5 THE COURT: All right.

6 MR. LANIER: Your Honor, we're on Bates number
7 ending in 204. You'll see her name --

8 THE COURT: Well, her name's on it, so...

9 Well, it seems to me the portion of the document with
10 her name on it should come in, whether she recognized it or
11 not, because her name's on it, and she -- you know, she
12 didn't disavow it. She didn't say someone put it on in an
13 unauthorized way.

14 I can't remember what she said about it, but --

15 MR. DELINSKY: Your Honor, I don't believe she
16 provided testimony about that portion of the deck.

17 THE COURT: If someone can pull out the
18 testimony for me. As I said, I thought the plaintiffs had
19 withdrawn this yesterday, so I moved on.

20 MR. LANIER: The testimony was about -- Your
21 Honor, I'm sorry, if I could borrow your document again.
22 This should not happen this way. I apologize. You've been
23 very patient, and I thank you for that.

24 The part that I questioned her about was about the
25 holy trinity alert on page 208, that it still wasn't working

1 as of that point in time and that it was a project to be
2 done.

3 THE COURT: Right, that I remember. She was
4 questioned on page 208.

5 Well, that page should come in.

6 I don't know, Mr. Lanier, if she was questioned about
7 these other pages that have her name on it.

8 MR. LANIER: I did not, Your Honor, and so
9 it's fine for me if that's the only page that comes in.
10 It's less distracting that way. We can put in the page
11 number.

12 THE COURT: It seems to me this one page
13 should come in because she gave testimony about it.

14 So without objection then, CVS-MDL-T380208, so it's
15 one page only. It happens also to say -- it doesn't have --
16 it has page number 29 on the document, so that one page
17 comes in.

18 MR. DELINSKY: Your Honor, we would just
19 propose that the cover e-mail be included, too, to get some
20 framing.

21 THE COURT: All right.

22 MR. DELINSKY: 084150001.

23 THE COURT: All right. Without objection, the
24 cover e-mail can come in. That's a good idea.

25 So I guess by the end of the day I'll get whatever

1 submissions on the jury instructions people want to make.
2 My team and I will obviously carefully consider them, and if
3 there's any -- I don't know if you've conferred and agreed
4 on anything. There hasn't been much agreement on jury
5 instructions, so --

6 MR. WEINBERGER: Your Honor, I can tell you
7 that with respect to the jury instructions that were
8 submitted I think by Special Master Cohen on the 1st, the
9 most updated, plaintiffs have no objection to.

10 THE COURT: Okay. Thank you, Mr. Weinberger.

11 MR. STOFFELMAYR: Kaspar Stoffelmayr. I think
12 we're still working together on this. Defendants may
13 have --

14 (Audio feedback.)

15 MR. STOFFELMAYR: I'm sorry.

16 THE COURT: Your metallic head or something?

17 MR. STOFFELMAYR: I'm magnetic or something,
18 yeah.

19 I think defendants may have some very, very limited
20 targeted suggestions that we'll get to you by 4 p.m.

21 THE COURT: Okay. Well, I will look at
22 anything you submit carefully.

23 MR. DELINSKY: Your Honor, can we just go back
24 to that exhibit?

25 MR. WEINBERGER: You want the whole thing, is

1 it?

2 MR. DELINSKY: No, but here's the problem,
3 Your Honor, is that what Ms. Harrington talked about was the
4 development of the new alert for the combination, okay? And
5 whether -- I think what Mr. Lanier asked her about, was the
6 prior DUR alert adequate or inadequate given that CVS was
7 trying to pioneer and in fact did pioneer this new alert.

8 There's numbers at the bottom which were not the
9 subject of any testimony, and there's no explanation for
10 them. And there's a potential for prejudice due to the lack
11 of explanation for what those are, and they can be
12 misconstrued.

13 THE COURT: On that one page -- Mr. Pitts, let
14 me see the one page.

15 MR. DELINSKY: Your Honor, there was just no
16 questioning or testimony about those numbers.

17 MR. WEINBERGER: Eric, can I see that?

18 THE COURT: That's true, the testimony was
19 about, you know, holy trinity alert. We didn't go into
20 the --

21 MR. DELINSKY: So we just ask those be
22 redacted, Your Honor.

23 MR. WEINBERGER: We don't have a problem with
24 that.

25 THE COURT: All right. Fine. We'll redact

1 the tables with the numbers at the bottom.

2 MR. DELINSKY: We'll work with Pete and Maria
3 to get that done.

4 Thank you, Your Honor.

5 THE COURT: Okay.

6 MR. MAJORAS: Your Honor?

7 THE COURT: Yes, Mr. Majoras.

8 MR. MAJORAS: Thank you, sir. Just an update
9 again on what we're looking at going forward, we talked
10 about it yesterday morning.

11 So we have Dr. Glickman and Mr. Hill today. We think
12 we'll also have some very short depositions before the end
13 of the day.

14 THE COURT: Okay.

15 MR. MAJORAS: We have the three pharmacist
16 witnesses that will be next week. Plaintiffs I'm sure know
17 this already, but I can disclose from Walmart's standpoint
18 it will be Lori Militello from our standpoint.

19 The one change from what I talked about yesterday, now
20 that we know it looks like we'll go into Tuesday, and from
21 events yesterday, we may call one additional expert. It's
22 Daniel Kessler. He's been previously disclosed and deposed.

23 We have disclosure obligations this evening, but we
24 will try to keep plaintiffs apprised as soon as we can on
25 the certainty of that.

1 THE COURT: That's not -- that's a different
2 Kessler from the Government official, right?

3 MR. MAJORAS: Yes, sir. That was David
4 Kessler.

5 THE COURT: What's his expertise?

6 MR. MAJORAS: Mr. Kessler will talk about
7 causation issues. We think it will be relatively short.
8 Obviously we have to watch our time, but that is one change
9 from yesterday.

10 THE COURT: All right. So you think you'll
11 get through the two experts and the depositions today?

12 MR. MAJORAS: I'm optimistic. It will be done
13 in my absence, Your Honor, so I'm sure everyone will move
14 quickly.

15 MR. DELINSKY: Your Honor, I think the key to
16 that rests with Mr. Weinberger and Mr. Lanier.

17 MR. WEINBERGER: Your Honor, I believe they're
18 probably talking about one of the depositions to be played
19 is Deborah Mack, and I hate to keep coming back to the well
20 on Deborah Mack's deposition.

21 I sent an e-mail yesterday to Special Master Cohen.

22 To give some context, Deborah Mack was the supervisor
23 of Mr. Nelson. She was -- we were permitted to depose her
24 as part of the sanction motion that arose after Susanne
25 Hiland's deposition. It was a discovery deposition.

1 They now want to play this deposition even though they
2 haven't demonstrated that she's unavailable. So, and you've
3 said that she can and that if we want to we can call her by
4 videoconferencing.

5 But that doesn't cure our concern about 80 percent of
6 her testimony, which is hearsay testimony about
7 conversations that she had or that someone else had that
8 they told her about.

9 THE COURT: I'm not going to let her talk
10 about conversations that someone else had. If she talked --
11 if she spoke to a Government official, she can relate that
12 on such-and-such a date or approximately such-and-such a
13 date I spoke to so-and-so from the State Board of Pharmacy,
14 and as -- I mean, I don't think she can relate the detail,
15 the exact words, but she can say, as a result of that, I did
16 X, Y, and Z or I didn't do X, Y, and Z. That's not hearsay.

17 MR. WEINBERGER: That's the problem, Your
18 Honor, with this deposition, because the guardrails were not
19 there at the time of the deposition, and embedded within
20 answers are specific information that she gleaned as a
21 result of those conversations or that -- or specific
22 information about those conversations.

23 She then did go on to say that she, you know, created
24 policies as a result of that. But since she's not
25 testifying live in court, you know, we can't attack those --

1 THE COURT: Well, understood. But, you know,
2 I can't -- then bring her -- you know, if you want to bring
3 her in next week, bring her in, and you can cross-examine
4 her.

5 MR. WEINBERGER: I don't want to bring her in
6 at all, but I don't want this deposition to be played that
7 has, you know, this prejudicial hearsay that's embedded in
8 it.

9 THE COURT: Well, we've already had testimony
10 that various people talked to people at the Ohio Board of
11 Pharmacy, and they had certain impressions and did certain
12 things.

13 MR. WEINBERGER: Not the Ohio Board, Your
14 Honor. Other boards of pharmacy.

15 MR. MAJORAS: It's a national policy, Your
16 Honor. Plaintiffs spent I don't know how many hours now
17 talking to Mr. Nelson about the national policies and why
18 Walmart had them. This has been ruled on many times
19 already.

20 THE COURT: Ms. Mack talked to someone at the
21 Ohio Board of Pharmacy?

22 MR. WEINBERGER: She didn't, not the Ohio
23 Board, Your Honor. There's no testimony about that. That's
24 what's so prejudicial about this, that they are seeking to
25 admit into evidence conversations that she had with Texas

1 and with Oregon. She can't --

2 THE COURT: I've allowed that kind of
3 testimony.

4 MR. WEINBERGER: But this is information about
5 what they said to her.

6 MR. MAJORAS: She's not testifying about what
7 they said, Your Honor. These are all questions that the
8 plaintiffs asked and she's responded to. It's been ruled
9 on.

10 THE COURT: I've looked at them and I've made
11 my rulings.

12 MR. WEINBERGER: Then, Your Honor, I think the
13 only way for us to respond to this is that we're going to
14 recall Carmen Catizone to the stand in rebuttal.

15 THE COURT: That's fine. The point is that
16 Walmart has, you know, a couple of witnesses have said that
17 they spoke to people at various state board of pharmacies,
18 and as a result of those conversations, they did or didn't
19 do certain things. They're allowed -- I mean --

20 MR. WEINBERGER: But that's not -- you know,
21 Your Honor, reading carefully this deposition, in these
22 answers about how we changed our policy is rank hearsay
23 about what somebody said, somebody from the Board of
24 Pharmacy said to either her or to somebody else at Walmart
25 that got related to her.

1 THE COURT: I'm not going to -- I'm not going
2 to allow her to talk about what someone else at Walmart
3 related to her. I believe we've excised that.

4 MR. WEINBERGER: But even what somebody at the
5 Board of Pharmacy specifically said to her is rank hearsay.

6 MR. MAJORAS: It is not in this case. It's
7 why we have the policies we had, Your Honor.

8 THE COURT: Mr. Weinberger, it may not be
9 hearsay. It's not necessarily being offered for the truth
10 of the matter, but the fact it was said.

11 MR. MAJORAS: That's absolutely right, Your
12 Honor.

13 MR. WEINBERGER: How is it not being offered
14 for the truth of the matter?

15 MR. MAJORAS: It shows why we have the
16 policies that they're attacking, Your Honor.

17 THE COURT: Maybe the conversation happened,
18 maybe it didn't. Maybe the person said it or not. But this
19 witness is saying on such-and-such a day I spoke to someone
20 at the State Board of Pharmacy.

21 MR. WEINBERGER: Right, and they said X, Y,
22 and Z.

23 THE COURT: Right.

24 MR. MAJORAS: And that's what motivated the
25 policy.

1 THE COURT: All right. It's not being used
2 for the truth of the matter asserted. She relied on it. I
3 mean, she thought it was authentic, and she's entitled to
4 rely on it. All right? It's a state official, okay?

5 MR. WEINBERGER: Well, then we're going to
6 need a limiting instruction, Your Honor, that, you know,
7 specifically says --

8 THE COURT: All right, if you want to, get me
9 a limiting instruction. That's why I've allowed this
10 testimony, because, you know, if someone talks to DEA or
11 someone talks to the Ohio Board of Pharmacy and they give
12 you instructions, the same way -- it's like a letter from
13 Mr. Rannazzisi. You know, you're entitled to rely on that.
14 He's an authority for DEA.

15 So you get a letter from him and it says do this or
16 don't do that. All right? Whether he really said it or
17 not, quite frankly, it doesn't matter. If the recipient
18 thinks it's authentic, then it comes in. The same way with
19 this conversation. Maybe it happened, maybe it didn't,
20 maybe she's not telling the truth. I don't know.

21 MR. WEINBERGER: Okay. Other than the one
22 document from Wisconsin, there is no --

23 THE COURT: Well --

24 MR. WEINBERGER: -- it's like the Rannazzisi
25 letter, Your Honor. There's no documentation about it.

1 MR. MAJORAS: That's an argument, Your Honor,
2 That's not a reason not to allow the testimony.

3 MR. WEINBERGER: It's a 403 issue of
4 unreliability.

5 THE COURT: You can cross-examine her, you can
6 bring the person in, okay. The other people were
7 cross-examined about it.

8 The point is it comes in because for the nonhearsay
9 purpose that Walmart had these conversations, and they acted
10 in reliance on them.

11 MR. WEINBERGER: All right. Well, before -- I
12 understand your ruling, Your Honor. And before this -- if
13 this deposition is intended to be played today, we're going
14 to have to seek a limiting instruction that you give either
15 before or immediately after the testimony.

16 THE COURT: Well, why don't you work with the
17 defendants and see what you can propose. Again, the reason
18 I'm allowing this in is really for the nonhearsay purpose
19 that the conversation took place; at least the Walmart
20 witnesses say that it did.

21 MR. MAJORAS: Thank you, Your Honor.

22 THE COURT: All right. Okay. Let's bring the
23 jury in, then.

24 (The jury is present at 9:10 a.m.)

25 THE COURT: Good morning, ladies and

1 gentlemen. Please be seated. And I understand one of our
2 jurors has a birthday, so happy birthday. Sorry, you know,
3 you didn't get the day off for your birthday.

4 MR. LANIER: Your Honor, will you lead us all
5 in a round of Happy Birthday?

6 THE COURT: You go. You're a better singer.
7 Congratulations.

8 Okay, Ms. Fumerton, you may call your next witness,
9 please.

10 MS. FUMERTON: Thank you, Your Honor. Walmart
11 calls Dr. Mark Glickman, who is an expert in statistics, to
12 the stand.

13 (Witness sworn.)

14 THE COURT: You may be seated. And you may
15 take your mask off while testifying.

16 You may proceed, Ms. Fumerton.

17 MS. FUMERTON: Thank you, Your Honor.

18 Dr. Glickman, is everything up there about the right
19 height? Sort of?

20 THE WITNESS: Close enough.

21 THE COURT: We can't adjust that, that's the
22 problem.

23 MS. FUMERTON: If you ever have a hard time
24 hearing me, or if the jury can let us know if they have a
25 hard time hearing you.

1 MARK GLICKMAN

2 - - - - -

3 DIRECT EXAMINATION

4 BY MS. FUMERTON:

5 **Q** Good morning, Dr. Glickman.

6 **A** Good morning.

7 MS. FUMERTON: Good morning, ladies and
8 gentlemen of the jury.

9 **Q** I want to get a few things out off the bat.
10 You are not a medical doctor?

11 **A** I am not a medical doctor, no.

12 **Q** Are you a pharmacist?

13 **A** I am not a pharmacist.

14 **Q** Are you an epidemiologist?

15 **A** I'm not an epidemiologist.

16 **Q** Are you an economist?

17 **A** I'm not an economist.

18 **Q** Okay. So why don't you please introduce yourself to
19 the jury and tell them a little bit about who you are.

20 **A** I'm Mark Glickman, a senior lecturer of statistics at
21 Harvard University. I'm also simultaneously a senior
22 statistician at the Center for Health Care Organization and
23 Implementation Research, which is a VA Center of Innovation.
24 And that's headquartered in Bedford, Massachusetts, pretty
25 close to where I work at Harvard.

1 **Q** And what is the VA?

2 **A** The VA is the Veterans Administration.

3 **Q** And generally speaking, why are you here?

4 **A** I'm here because I was responding to some reports that
5 were produced by Dr. McCann and some of the other
6 plaintiffs' experts. I ended up producing two reports, and
7 I've been doing some work, computational work that I'm going
8 to be talking about today.

9 **Q** Did you also review Walmart's dispensing data as it
10 was reviewed by Dr. McCann?

11 **A** I did, yes.

12 **Q** Did you submit any expert reports in this case?

13 **A** I did submit expert reports.

14 **Q** How many?

15 **A** Two.

16 **Q** Did you sit for a deposition?

17 **A** Excuse me?

18 **Q** Did you sit for a disposition?

19 **A** I did sit for a deposition.

20 **Q** And with respect to the expert reports you just
21 mentioned, did anybody assist you with those?

22 **A** I did receive some assistance, yes.

23 **Q** From who?

24 **A** I received assistance from Cornerstone Research.

25 **Q** And who is Cornerstone?

1 **A** Cornerstone Research is a firm that I think tends to
2 assist experts and counsels to do analyses.

3 **Q** And were the data sets that you were using very large?

4 **A** They were enormous. They initially practically broke
5 my computer when I tried to load them.

6 **Q** Did Cornerstone sort of help with the enormity of that
7 data set?

8 **A** They sure did, yes.

9 **Q** With respect to the expert reports you offered in this
10 case, were all the opinions offered in those reports yours?

11 **A** They were mine, yes.

12 **Q** And are all of the opinions that you are offering
13 today also yours?

14 **A** Yes.

15 **Q** Before we get to those opinions, I want the jury to
16 learn a little bit more about you, and so I think we're just
17 going to walk through your resume.

18 MS. FUMERTON: Mr. Pitts, could I please have
19 the ELMO.

20 **Q** And Dr. Glickman, this should be in Tab 1 of your
21 binder.

22 MS. FUMERTON: That's true for Plaintiffs and
23 Your Honor, if you would like to follow along as well.

24 **Q** Mark Glickman, that's you; is that right?

25 **A** That's me. There's my phone number.

1 **Q** Oh. Well, hopefully the jury won't be calling you
2 after this. Just ignore that part of it.

3 So we have your office address and Harvard University.
4 Can you explain why that is?

5 **A** Because I work there. So, yeah, that's the address of
6 the Statistics Department at Harvard University where I'm a
7 senior lecturer on statistics.

8 **Q** And how long have you been with Harvard?

9 **A** So I've been at Harvard as a full-time employee as a
10 senior lecturer since the beginning of 2016, and I was there
11 as a visitor off and on since 2006.

12 **Q** I want to ask you a little more about your education.
13 Could you please explain that to the jury?

14 **A** So I received my bachelor's in statistics *Summa Cum*
15 *Laude* from Princeton University in 1986. I subsequently got
16 my master's degree in statistics from Harvard University in
17 1989, and then I got my Ph.D. in statistics from Harvard in
18 1993. So hopefully you see the theme there.

19 **Q** And you just mentioned your position at Harvard, but
20 let's talk a little bit about your other academic
21 appointments, if we can see these here.

22 Can you just generally sort of hit the highlights for
23 us?

24 **A** Yeah. So I basically spent a good part of my career
25 at Boston University. That's where I started. I was in the

1 Math and Statistics Department for seven years.

2 And then I moved over to the Department of Health
3 Policy and Management, where I was a professor there from,
4 what was it, 2004 until 2015, at which point I moved over to
5 Harvard.

6 I was also a postdoctoral fellow at Harvard Medical
7 School for one and a half years. That was following my
8 Ph.D.

9 And then also, as I mentioned earlier, I am a senior
10 statistician at the Center for Healthcare Organization and
11 Implementation Research, where I work on grant-funded --
12 VA-funded grants that are designed to improve healthcare for
13 veterans.

14 **Q** I want to talk about those grants and your work as an
15 investigator in a minute, but just one follow-up question.

16 So what does a statistician do at Harvard Medical
17 School? I'm specifically asking about a little more
18 information on this postdoctoral fellow.

19 **A** So the Department of Healthcare Policy at Harvard
20 Medical School is an interdisciplinary department, so it has
21 health economists, it has doctors, it has sociologists, it
22 has people like me, statisticians. And we all collaborate
23 on projects together with the aim of, you know,
24 understanding public health and improving public health.

25 So you need all those pieces together in order to form

1 these projects that are likely to produce innovation and
2 novelty in healthcare delivery.

3 **Q** And moving down, I want to talk a little bit about
4 your major research interests. And if you could just
5 explain sort of what it is that you have listed here.

6 **A** Sure. So the first area, which is called Bayesian
7 inference, is a particular framework for analyzing data.
8 The world's -- most statisticians are not aware of this, but
9 the world splits into roughly equal parts. There are
10 classical statisticians and then there are people like me
11 who are Bayesian statisticians.

12 The way we tend to perform our data analyses is
13 slightly different from the classical statisticians, but it
14 all hinges on the definition of probability. But that's an
15 area that I've done some methodological work.

16 The pair comparisons work, pair comparison models and
17 design, basically stems from my interest in chess, so I got
18 into statistics through my interest in the game chess.

19 I was a tournament player when I was very young, and
20 the one thing I was really interested in is how they
21 numerically come up with ability estimates of chess players.
22 So like when you play in a tournament, you end up earning a
23 chess rating. And if like you and I have chess ratings, we
24 should be able to figure out what's the probability that one
25 of us defeats the other.

1 And so I was always interested in that, and that's how
2 I got into statistics.

3 And fast-forward, you know, 20 years later, I've
4 actually written a lot of papers in that area, in being able
5 to come up with better ways to estimate players' abilities
6 based on team outcomes in chess.

7 **Q** And how about this Applications to Health Services and
8 Medicine?

9 **A** All right. So also a lot of the work that I end up
10 doing is applications to health services, and a lot of it
11 has been for veterans, you know, healthcare for veterans.

12 So I have a number of applications of work in health
13 applications, so just as a couple examples, I've done some
14 work in what's called genetic epidemiology, which is
15 essentially being able to figure out how certain genes are
16 going to influence health outcomes later.

17 And so one of the kinds of problems I worked on early
18 on was how to take certain what are called genotypes,
19 particular mutations of genes, and figure out what their
20 impact is going to be in developing breast cancer. So that
21 was one project I did early on.

22 I've also been interested in racial disparities in
23 delivery of healthcare. So it's actually pretty well known
24 that in healthcare that blacks are -- tend to be -- have
25 worse healthcare outcomes, particularly for hypertension,

1 than whites do. And that's something that we've done a lot
2 of work in trying to dig in and understand what's the reason
3 for that, because it may not just simply be genetic, it may
4 end up being because providers aren't providing the best
5 care for their black patients compared to how they deliver
6 care for white patients. And that's something that we've
7 been exploring.

8 **Q** I'm going to stop you there just because actually you
9 have a ton of interesting things to talk about. We're going
10 to talk about some more of them as well.

11 Let's talk about the grants work that you did, and I
12 know you mentioned the Department of Veteran Affairs. I
13 want to sort of flip through here, if I can turn the page.

14 And you have other grant work here, and I want to ask
15 you about your work with the U.S. Olympic Committee.

16 **A** Okay. So in this whole sphere of work that I do that
17 involves measuring abilities like for chess players, I've
18 been able to move that over to apply it to not just, like,
19 chess, but also sports.

20 So I've over the years in this, I guess this one entry
21 in my CV is an example, I've established some research
22 contracts with the U.S. Olympic Committee to help them
23 figure out how to gage the strength of athletes; not just
24 the athletes that are U.S. athletes, but athletes
25 internationally.

1 And the purpose for doing that is they want to be able
2 to figure out, for example, you know, whether they should
3 send U.S. athletes to certain international events and
4 decide whether or not the competition that I figured out how
5 strong they are, if they're going to just like wipe them
6 out, in which case, you know, they probably don't want to
7 send the U.S. athletes to those competitions.

8 So that's -- you know, that's one area of work that
9 I've done with the U.S. Olympic Committee.

10 **Q** Okay. Now, I always tell folks this isn't the time to
11 be humble, so let's talk about your awards. Can you just
12 tell us about some of the awards that you've received?

13 **A** So I have a bunch of awards for teaching. I was, you
14 know, given certificates of distinction in teaching when I
15 was a graduate student.

16 One of the awards that I guess I'm most proud of is my
17 being an elected -- being elected a fellow of the American
18 Statistical Association. So that's an award that recognizes
19 achievement in statistics, and that's given to one-third of
20 1 percent of all of its members on a yearly basis. And so I
21 earned that in 2014.

22 Based on a lot of the work that I've done with U.S.
23 Chess, I guess I've received two awards. One as recent as
24 two years ago that was a Distinguished Service Award, and
25 then previously I received a Special Services Award from the

1 executive board. And this is all related to the work that
2 I've done with rating chess players and getting involved in
3 the rating of chess players.

4 **Q** And with respect to the American Statistical
5 Association, and I guess I shouldn't be surprised that a
6 statistician knows that it was offered to one-third of 1
7 percent of all people, but do you have other involvement
8 with that organization?

9 **A** Yeah. I mean, so the American Statistical Association
10 is -- it's really the main organization, the main
11 professional organization for statisticians in the U.S.,
12 North America, and for some people around the world.

13 I'm on the Board of Directors of the American
14 Statistical Association. So it's a 12-member Board. We
15 meet four times a year, have lots of e-mail exchanges. And
16 I'm finishing up my term this year; in fact, two weeks from
17 now we have our final Board meeting of the year. But
18 that's -- you know, so I've been involved in the
19 administration of statistics and organizational issues and
20 various opportunities for statisticians.

21 And I've also been involved in a particular -- well,
22 in what's called the section on Statistics and Sports. This
23 is the subset of members that are particularly interested in
24 the intersection between statistics and sports and being
25 able to help them with opportunities, as well.

1 **Q** Dr. Glickman, are you published?

2 **A** Yes. I publish my work.

3 **Q** And in your CV, I think if we started flipping
4 through, we have -- see if I can pull it up a little bit
5 more here -- page after page here, it looks like, of
6 articles.

7 Can you give a sense to the jury of approximately how
8 many different articles you've written?

9 **A** So I've written 82 or 83, depending on how you count;
10 well, on this CV you count 82. I have 82 peer-reviewed
11 publications, and then I have a number of other manuscripts
12 that are not peer reviewed; but in total I guess we're, you
13 know, adding up to maybe 110 publications.

14 **Q** And you mentioned the CV. Do you have an additional
15 article that you've written since you offered the CV?

16 **A** Yeah, I think since this version I have one other
17 article that was accepted for publication about a month ago.

18 **Q** So you're here to talk about statistics.

19 **A** I am here to talk about statistics.

20 **Q** Some of us are more numbers people than others. We're
21 going to be given some very important information today, but
22 also I want to keep it interesting for the jury. So could
23 you tell us maybe one or two of your articles that are maybe
24 more interesting to those of us that aren't numbers
25 inclined?

1 **A** Sure. So one of the areas that I got into pretty
2 recently is the intersection between statistics and music.

3 So a couple years ago I was working with a
4 collaborator from Dalhousie University. We both discovered
5 that we're huge Beatles fans, and we ended up landing on
6 this project where we took all the Beatles songs that were
7 written by Lennon and McCartney, and based on musical
8 features of those songs we ended up constructing a
9 statistical model that would predict whether the song was
10 written by John Lennon or whether it was written by Paul
11 McCartney.

12 So you may be thinking, well, why bother, what's the
13 point of that. The reason is there are actually a number of
14 Beatles songs, I should say Lennon and McCartney songs,
15 they're actually of disputed authorship. One of the songs
16 is the song "In My Life," which is, according to *Rolling*
17 *Stone*, the -- I think it's the 23rd best song of all of rock
18 and roll.

19 So the way we did is we ended up applying our
20 statistical model to that particular song and determined
21 that with very high likelihood John Lennon wrote most of it
22 and Paul McCartney helped write on the bridge. And so that
23 ended up getting some media attention, and that was kind of
24 a fun project.

25 I'll mention one other, which is in a completely

1 different sphere if you're not a rock person. I ended up
2 working with a student where we ended up coming up with a
3 computer generation of pieces that would sound like Bach
4 chorales. So using some rules of music, we were able to
5 come up with a statistical procedure that would randomly
6 generate music that would sound like Bach.

7 We ended up giving it to like a bunch of music experts
8 to judge whether or not what they were hearing was actually
9 Bach or whether it was computer-generated music, and they
10 did no better than guessing. So that was kind of a fun
11 project as well.

12 **Q** And do you also give presentations? And I think if we
13 wanted to flip again, we would be looking at sort of pages
14 and pages of select presentations. But if you could give
15 the jury a sense of what types of things you typically
16 present on.

17 **A** So I've given a number of presentations. Most of
18 these presentations tend to track with articles that I'm
19 writing. Very typically when academics end up working on
20 research and they're writing their articles, they also
21 simultaneously give talks on their work to essentially, you
22 know, share the work that you're doing and, you know,
23 essentially advertise the work that you're involved in.

24 So most of these talks are connected very -- very
25 specifically to the papers that I wrote.

1 **Q** And bring it back to healthcare too.

2 Have you given presentations relating to statistics
3 and healthcare?

4 **A** Yeah, absolutely, for some of the papers that I've
5 written are related to healthcare.

6 **Q** Switching subjects a little bit. Have you ever been
7 engaged as an expert before?

8 **A** Yes, I have.

9 **Q** How many times, approximately?

10 **A** As a testifying expert or just in general?

11 **Q** Let's start with a testifying expert.

12 How many times have you testified as an expert?

13 **A** This would be I think my fourth time.

14 **Q** And can you just give, maybe pick a couple examples of
15 when you've testified in court as an expert in statistics?

16 **A** Yeah. The last time I testified was a few years ago
17 in a case in Boston which involved a patron at a Red Sox
18 game getting hit by a foul ball and getting injured pretty
19 severely, and then she brought a suit against the Red Sox.

20 And the Red Sox hired me as a statistician
21 specifically to estimate the probability of getting injured
22 by a foul ball in the area of the stadium where she got hit,
23 and essentially assessed that it's a low probability, and so
24 that was the role that I played.

25 **Q** So I'll confess, I had a picture of Fenway Park, and

1 then I was told that folks in Cleveland don't like the Red
2 Sox very much, so I removed that; so hopefully they won't
3 hold that against you.

4 So give another example of one you've testified in
5 court.

6 **A** So before that I was involved in a case involving the
7 fraudulent selling of some coins on the Internet, and I was
8 brought into this case at the restitution phase. So these
9 were defendants that were already convicted, they were found
10 guilty, and so I was brought in at the phase where they were
11 awarding damages.

12 My involvement was they had experts evaluate the value
13 of the coins that were being fraudulently sold, and then
14 they were taking that set of coins and trying to extrapolate
15 to all the coins that they would end up selling to get like
16 an overall damages calculation.

17 My involvement was to be able to assess whether the
18 procedure of extrapolating from that set of coins, a small
19 set that were closely followed and valued, to the entire set
20 of coins, and what the problems were with how the plaintiffs
21 were handling that.

22 **Q** Okay. And so I'm now stating the obvious, and don't
23 take offense to this question.

24 But you're not a baseball player?

25 **A** I'm not a baseball player.

1 **Q** You're not a coin collector?

2 **A** I'm not a coin collector.

3 **Q** So what allows you to testify as an expert in these
4 types of cases if you don't have the sort of underlying
5 substantive expertise about what that case is about?

6 **A** Right. Well, my expertise is in statistics and
7 quantitative methods, so I'm not bringing in expertise in
8 the substantive area. I'm bringing in expertise in how to
9 analyze data and work with data and make sense out of data.

10 **Q** And before we turn into the meat of your observations,
11 I want to do a few other housekeeping items.

12 Are you being paid for your work in this case?

13 **A** I am getting paid, yes.

14 **Q** How much do you charge per hour?

15 **A** I charge \$700 per hour.

16 **Q** And approximately how much have you made on this case
17 to date?

18 **A** I would estimate about 130 to 140,000.

19 **Q** And actually, backing up to your expert testimony,
20 have you ever testified in an opioid litigation before?

21 **A** I have never testified in an opioid litigation, no.

22 **Q** And other than what you just testified to, are you
23 receiving any other compensation for this case?

24 **A** I am not, no.

25 **Q** Do you consider yourself an expert in statistics?

1	A Yes, I do.
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2 Q And can you briefly explain, and we'll talk about some
3 of the specifics more a little bit later, what type of
4 materials you reviewed to offer your opinions in this case?

5 **A** Yes. I was provided McCann's -- Dr. McCann's reports,
6 his data. I received a bunch of deposition testimony. I
7 reviewed a bunch of literature. And that informed the
8 opinions that I'm going to be presenting.

9 Q Did you review an expert report by Mr. Catizone?

10 | **A** Yes, I did, yeah.

11 Q And did you read deposition testimony from both of
12 these experts from plaintiffs as well?

13 **A** I did, yes.

14 Q Are all the opinions you are offering today being
15 offered to a reasonable degree of professional certainty?

16 **A** They are, yes.

17 Q And I'll just ask that in response to all of my
18 questions that you hold yourself to that standard in the
19 testimony you give.

20	A I will.
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21 Q Okay. So as we dive into the specifics of your
22 testimony today, did you work with me to create some slides
23 to aid in your testimony?

24 **A** Yes, I did.

25 MS. FUMERTON: Can we please bring up the

1 first slide. We're getting there. Perfect.

2 **Q** So, Dr. Glickman, could you just give a general
3 preview of the topics that we're going to cover today.

4 **A** Sure. So I'm going to be discussing with you three
5 main areas of the work that I did.

6 So the first is essentially characterizing opioid
7 dispensing by Walmart in Lake and Trumbull Counties. I'll
8 go through that a little bit.

9 I'll also be discussing some specifics about the red
10 flagging method, so specifically focusing on Mr. Catizone's
11 and Dr. McCann's red flag algorithm logic.

12 And then I'll finish up by describing a particular
13 approach that Dr. McCann provided in calculating what are
14 called confidence intervals. And I'll be discussing that
15 event.

16 **Q** Let's start with your analyses of the Walmart
17 pharmacies in Lake and Trumbull Counties.

18 If we could have the next slide, please.

19 And there are -- the jury has heard this before, but
20 there are five Walmart pharmacies in Lake and Trumbull
21 County; is that right?

22 **A** That's right.

23 **Q** Okay. And can you give the -- I guess tell the jury
24 what are a preview of the four different types of
25 observations that we're going to discuss.

1 **A** Right. So within characterizing Walmart pharmacies,
2 what I'm going to be doing is discussing Walmart's fairly
3 limited presence in these counties with respect to opioids.
4 I'm going to be contrasting the Walmart pharmacies with
5 several independent pharmacies.

6 I'll also be discussing something called the
7 controlled substances ratio, essentially examining how the
8 fraction of controlled substances dispensed by Walmart, what
9 they look like. And then I'll also be showing you a slide
10 on opioid prescriptions per capita. Essentially it's a way
11 of measuring the number of prescriptions that are per capita
12 that are dispensed.

13 **Q** Okay. Let's have the next slide, please, and start
14 out with your sort of first observations.

15 What are we looking at here? Maybe we can make it a
16 little bit bigger so it's easier for the jury to see.

17 **A** Thank you. So this is a table that I'll describe a
18 couple of the main pieces, but I'll describe a little bit
19 more detail maybe in one or two slides later.

20 This is essentially a summary of the nondefendant
21 dispensers and the defendant dispensers by Lake County,
22 Trumbull County, and then combine together.

23 I want to point out that in this set of data there are
24 168 nondefendant dispensers, which includes pharmacies, but
25 there's also some clinics and other, like, hospitals. And

1 also there are 17 -- I'm sorry, so that's for Lake County.

2 And then for Lake County there are 17 defendant dispensers.

3 **Q** And let me stop you there.

4 When you're referring to defendant dispensers, who are
5 you referring to?

6 **A** So I'm referring to Walmart, Walgreens, and CVS.

7 **Q** Okay. And we actually have a couple charts here, so
8 I'm going to skip ahead to the next one. But first, for the
9 record, this has been identified as WMT-MDL-01540A.

10 And did you put the summary of data together?

11 **A** I did, yes.

12 **Q** Okay. Let's look at the next one, and I'll have you
13 talk about the method that you did that a little bit more in
14 depth.

15 (Court reporter interjection.)

16 MS. FUMERTON: I'll slow down. I apologize
17 for that.

18 **Q** Okay. Let's turn to the next slide, please.

19 All right. For the record, this has been marked as
20 WMT-MDL-01541A.

21 And Dr. Glickman, can you tell us what we're looking
22 at here?

23 **A** Right. So this is a table that it's formatted pretty
24 much the same way as the table you just saw, but it's
25 focused specifically on the defendant pharmacies, so CVS,

1 Walmart, and Walgreens.

2 Again, that first column is telling you the number of
3 dispensers within each county, and then combined by just
4 basically adding them up.

5 More importantly, the set of -- there's a set of
6 columns that says "all drugs" and there's a set of columns
7 that says "oxycodone and hydrocodone."

8 What these are displaying is information on the
9 dispensing of opioids. And what it can do is -- I guess I
10 could tell you that the column that is labeled "MME" is the
11 so-called morphine milligram equivalent. This is
12 essentially telling you in units that can be compared across
13 different medicines what the total number of these
14 particular units is aggregated by the different pharmacies.

15 So, for example, for Walmart in Lake and Trumbull
16 County, I don't know if you want to highlight that 99
17 million.

18 **Q** Yeah, I was just going to say. I want to focus on --
19 let me ask you a couple questions here. Let's -- if we can
20 get that Walmart line focused, that's what I'm particularly
21 interested in in talking to you about today.

22 You mentioned MME and dosage units.

23 Why do you have it sort of listed here both ways?

24 **A** Well, so these are two different ways of understanding
25 how opioids are dispensed. So dosage units are just like,

1 you know, pills or patches or lozenges. Those are just like
2 the individual units that are being dispensed.

3 The problem, of course, is that if you're trying to
4 say that there's a certain amount of opioids that are being
5 prescribed by pill, and you prepare them, you know, between,
6 say, two pharmacies, you don't know whether one set of pills
7 is more -- like, contains more potency in the medication
8 than another.

9 So comparing by pills isn't really quite the right
10 comparator. So instead, what you can do is you can convert
11 them into this thing called MME.

12 And so MME puts everything on the same baseline. It's
13 the -- you know, if you have two pharmacies that are
14 dispensing the same MMEs, in total what they're doing is
15 they're dispensing the same potency of opioids aggregated
16 across all of the medications, all the prescriptions.

17 **Q** All right. Thank you for that explanation.

18 Actually, I want to focus then on that MME column, and
19 specifically on sort of what did you observe as to what
20 Walmart's share of opioids dispensed in Lake and Trumbull
21 Counties by MME is attributed to Walmart.

22 **A** Right. So based on this data set -- based on the data
23 set I'm using, I can aggregate all of the MMEs in the county
24 that are dispensed across all of the pharmacies in the
25 entire set of two counties. And then what I can do is I can

1 look at the fraction of the MMEs that are dispensed
2 particularly by Walmart.

3 And so that ratio of the total MMEs dispensed by
4 Walmart over the entire set of MMEs dispensed by all
5 dispensers in the county is the share. It's the share of
6 the Walmart MMEs for those sets of counties.

7 **Q** And where do you see that number here on this chart?

8 **A** And so that number that's sort of being highlighted is
9 that 3.15 percent.

10 **Q** Okay.

11 **A** So the 3.15 percent means that out of all the MMEs
12 that have been dispensed in 2006 to 2014 in Lake and
13 Trumbull Counties, 3.15 percent of them have been dispensed
14 by Walmart.

15 **Q** Okay. So I want to dig into this a little bit more,
16 particularly on this chart.

17 You mentioned the data set. What is the data set that
18 you're using?

19 **A** Right. So the data set that I'm using is a version of
20 the ARCOS data. And this is the data set that the DEA
21 compiles based on, you know, these dispensers and
22 distributors making their opioid data available.

23 This was a data set that was used by Dr. McCann, and
24 we ended up using that set of data.

25 **Q** Okay. So let's take down our 3.15 percent for a

1 second, and I want to walk through for the jury just so they
2 understand, because I think sometimes people are throwing
3 out numbers, they wonder are we comparing apples to apples,
4 what's happening here.

5 So if you can turn to I think it is Tab 4 in your
6 binder. And I'm going to --

7 MS. FUMERTON: Mr. Pitts, can I have the ELMO,
8 please?

9 Q Do you recognize this document, Doctor?

10 A Yes, I do.

11 Q And what is this?

12 A So this is an appendix from Dr. McCann's reports.

13 Q Okay. And how can this be used, if at all, to
14 calculate market share?

15 A Right. So if you turn the page, you're going to see a
16 listing of dispensers in Lake and Trumbull County over this
17 time period, 2006 to 2014. And what you'll notice in that
18 very last column is the total MMEs for each individual
19 pharmacy over that time period.

20 Q And is this ranked in any way? I don't know if you
21 can sort of see the list here.

22 A Yeah, you'll see that it's actually sorted in order
23 according to that last column, that MME column.

24 Q So if we take Franklin Pharmacy and highlight that,
25 what can you tell about Franklin Pharmacy here?

1 **A** Right. So that's the pharmacy over this time period
2 between Lake and Trumbull Counties that has the largest
3 total MME.

4 **Q** And this data, to be clear, is Dr. McCann's data; is
5 that right?

6 **A** This is Dr. McCann's data, that's right.

7 **Q** And so you didn't manipulate this in any way. This is
8 directly from his report?

9 **A** That's correct.

10 **Q** And what is the second highest listed pharmacy here?

11 **A** So the second one is Overholt's Champion Pharmacy.

12 **Q** Okay.

13 **A** And both of these, by the way, are independent
14 pharmacies.

15 **Q** And if we look at the third one, I think the jury has
16 heard about Bellevue before too. Where is Bellevue on this
17 list?

18 **A** Bellevue is ranked number four in terms of total MMEs.

19 **Q** Let's talk about Walmart. If we want to get to a
20 Walmart, where do we start looking?

21 **A** I believe you need to scroll down this a little bit.
22 I think if you go two-thirds down the page you'll see
23 Walmart Store 1863.

24 **Q** So this is the first Walmart that shows up on this
25 list; is that right?

1 **A** Don't ask me to say what number that is.

2 **Q** I'm sorry, I'm not asking you to count them, but if
3 we're looking down the list, this is the first time you see
4 a Walmart; is that fair?

5 **A** That's correct.

6 **Q** Okay. So tell me or explain to the jury how then you
7 can use -- did you essentially use these numbers to
8 calculate market share, or how did you do that?

9 **A** Yeah, so basically what you can do is just search for
10 the Walmart entries in this table. So the one that's just
11 been highlighted has the 36 million MMEs, you could do the
12 same thing for each of the other Walmart entries. And there
13 should be I think five other ones.

14 And when you go through them, take those total MMEs,
15 add them all up, that's going to be the total contribution
16 for Walmart; and take that number and divide by whatever
17 happens to be the total MMEs in the county for that time
18 period.

19 **Q** And you mentioned the total counties, so I want to --
20 or total MMEs.

21 If you turn to Tab 5 in your binder, I want to show
22 something else to the jury.

23 And do you recognize this document?

24 **A** Yes, I do.

25 **Q** And what is this?

1 **A** This is another appendix from Dr. McCann's reports.

2 **Q** Okay. And so you mentioned the total numbers. Is the
3 total number reflected on this chart?

4 **A** Right. So this is a table that summarizes aggregated
5 MMEs. So if you look at that third column where it says
6 "Total MME," that's basically -- Dr. McCann already
7 aggregated like whole bunches of different types of
8 dispensers together.

9 So, for example, that first line is chain pharmacies,
10 the next line is retail pharmacies, so there are different
11 kinds of dispensers. And he basically ended up adding up
12 all of the total MMEs and put them into categories.

13 Now, this table contains all possible categories of
14 sellers of opioids, and so that bottom number that was just
15 highlighted is that total, the total for the entire county
16 over that time period.

17 **Q** And so just to sort of summarize, if we take all of
18 the Walmart numbers from this appendix and divide it by the
19 total share in this appendix, is that how you calculate the
20 3.15 percent?

21 **A** Yeah. If you do that division, that will give you
22 that 3.15 percent.

23 **Q** And so these are Dr. McCann's numbers. So does this
24 mean you just agree with Dr. McCann?

25 **A** Well, I mean, this is based on Dr. McCann's

1 computation -- his data, so I'm agreeing in using the data.

2 **Q** And specific to the 3.15 percent, do you know if
3 Dr. McCann agrees with that calculation?

4 **A** Yes, he does. I mean, he said so in his deposition
5 testimony.

6 **Q** And so let's turn back to the slide presentation. And
7 we've been talking about a lot of numbers, and some people
8 are more visual. So can you just describe what's on this
9 slide once we get it back up?

10 **A** Okay. Right. So I mean, if looking at numbers and
11 tables is not your thing, then this might be a nice visual
12 representation of what I was just describing with this 3.15
13 percent. Namely, that that very thin blue bar at the bottom
14 is representing 3.15 percent of all the MMEs dispensed in
15 Lake and Trumbull County over this time period.

16 We also included two other bars. There's this gray
17 bar above it which accounts for roughly 25 percent of the
18 MMEs distributed -- dispensed by the other pharmacy
19 defendants, and then there's the remaining 72 percent
20 roughly of opioids that were dispensed by nondefendants.

21 **Q** And what geographic region? Is this specific to Lake
22 and Trumbull?

23 **A** As the header says, this is for Lake and Trumbull
24 County. And it is over the 2006 to 2014 time period.

25 **Q** Okay. Let's look to the next slide, please.

1 And I don't know if you can pull it up so folks can
2 see this on the screen, but it's WMT-MDL-01539.

3 Did you create this chart?

4 **A** Yes, I did.

5 **Q** And what are we seeing here?

6 **A** So this is even -- the top part of this table is even
7 a further breakdown of the Walmart pharmacies. So now this
8 is the MMEs by individual pharmacy, so that's what's on the
9 top.

10 So if you see what the shares column is for total
11 MMEs, those percentages that you see are the total MME
12 percentage in the county for each of those individual
13 Walmarts.

14 What I did though is I compared them just for -- I
15 compared them to three independent pharmacies which happened
16 to be those -- the top three or four in the chart that we
17 looked at earlier.

18 **Q** And if we turn then to page 7, again for those of us
19 that might not be completely loving number charts, what do
20 we have on the next slide.

21 Part of this is my fault because throughout this trial
22 my eyes have gone, so I said I need everything to be blown
23 up a little bit bigger for folks, so we're messing with the
24 size.

25 What did you depict here?

1 **A** Like, for starters, if you focus your attention on the
2 left part of that slide, you'll see part of the map that
3 shows Lake and Trumbull Counties and the locations of the
4 five Walmart stores, as well as the three independent
5 pharmacies that we just mentioned, and so it's just showing
6 the locations. So in particular, the three independent
7 pharmacies happen to be in Trumbull County.

8 What I have on the right is essentially summarizing
9 some of the key information on the table I just showed you.
10 For all Walmart pharmacies, the share of MMEs that are
11 dispensed is that 3.15 percent. By comparison, if you take
12 the three independent pharmacies, take their total MME, and
13 divide by, you know, the total MMEs dispensed in the county,
14 it turns out to be 16.5 percent. So there are five times as
15 many MMEs dispensed in these three independent pharmacies
16 compared to what are being dispensed in the five Walmart
17 stores.

18 **Q** Let's look to the next slide, please.

19 And this, for the record, is WMT-MDL-01539, and it's
20 the second page of that.

21 Could you explain what this summary is?

22 **A** Yeah. So this is a particular focus of information
23 that appeared on the previous slide. The previous one was
24 showing you everything in Lake and Trumbull Counties all put
25 together. This one is focused particularly on Trumbull

1 County.

2 So if you restrict your attention just to the total
3 MMEs that are dispensed in Trumbull County, what this is
4 showing is that for those two Walmart stores that are in
5 Trumbull County, they account for a total of 1.26 percent of
6 the entire set of MMEs dispensed in Trumbull County.

7 **Q** And do we have a visual representation of that as
8 well?

9 **A** I think we're about to.

10 **Q** If you can go to the next slide, please.

11 So what are we seeing here --

12 **A** Right. So the bar -- well, I mean, for starters,
13 there's Trumbull County in that yellow square, so we know
14 what stores we're talking about.

15 So Walmart Stores 2197 and 3860 are the two Walmart
16 stores.

17 **Q** Those are the blue dots?

18 **A** Those are the blue dots. Then the red dots are
19 Bellevue, Overholt's, and Franklin.

20 And if you flip back actually to the table, just go
21 back one slide.

22 MS. FUMERTON: You don't have to blow it up
23 this one time, just to make it easier.

24 **A** Yeah, just to go to the bottom of that page, you'll
25 see each individual pharmacy contributes, in the case of

1 Franklin it's 12.4 percent total MMEs, 9.06 total MMEs a
2 share, and then 5.24 percent total MMEs.

3 So each individual pharmacy is contributing these
4 percentages. If you add all of those up, if you go to the
5 chart in the next slide, that adds up to a total of 26.7
6 percent of the total MME share.

7 **Q** Okay. Let's look to the next slide.

8 And what are you depicting here?

9 **A** So in this situation I want to do just a -- you know,
10 it might be a little bit confusing to be talking about
11 comparing, you know, three pharmacies with two pharmacies or
12 five pharmacies with three pharmacies. So what we did is we
13 just wanted to do just sort of a one-on-one comparison.

14 So just focusing on Franklin Pharmacy, the -- one of
15 the independent pharmacies, and the Walmart pharmacy that is
16 closest in location to it, which is this store 2197, we can
17 do a comparison of the total MMEs at those two stores in
18 this time period.

19 So in Franklin, there are 241 million MMEs that were
20 dispensed, and by contrast, in Walmart there are 18.4
21 million MMEs that were dispensed. These are not
22 percentages. These are total MMEs that are represented in
23 the bars.

24 And so for this particular pharmacy, the independent
25 pharmacy, they dispensed 13 times as many opioids measured

1 by MMEs compared to the nearest Walmart pharmacy.

2 **Q** Okay. And let's look at the next slide.

3 Did you do this for Overholt's Pharmacy as well?

4 **A** Right. So I did the comparison also between
5 Overholt's and, again, Store 2197, which is the closest to
6 it.

7 And again, if you look at the chart on the right,
8 you'll see that there are 176.5 million total MMEs that were
9 dispensed in Overholt's compared to 18.4 million that were
10 dispensed at the Walmart pharmacy.

11 And so again, this is a situation where nine times as
12 many opioids that are being dispensed by MME by the
13 independent pharmacy compared to the Walmart pharmacy. So
14 it gives you a sense just sort of the size difference.

15 It's probably worth mentioning though that this
16 particular pharmacy, Overholt's Pharmacy, pleaded guilty for
17 opioid dispensing related issues in 2011 and no longer was
18 dispensing opioids. So in fact, this 176.5 million is not
19 really over the entire period up through 2014. It's only a
20 part of that time period.

21 So in fact, even though that it's nine times as many
22 total MMEs dispensed, it's dispensed over a shorter time
23 period, whereas the Walmart one is over a longer time
24 period.

25 So that kind of -- you know, hopefully that makes the

1 point that this number, the 176.5, compared to the 18.4, is,
2 you know -- like, even though that's a fairly large -- you
3 know, seemingly large difference in the number of times of
4 MMEs dispensed, if Overholt's had been in business longer
5 and dispensed at the same rate, that number would have been
6 even larger.

7 **Q** Let's look at the next slide, please.

8 And for the record, this is WMT-MDL-01555.

9 Is this another summary you prepared?

10 **A** Right. So this is very similar to the last set of --
11 last table that you saw, but this time it's only focusing on
12 oxycodone 80 milligrams and oxycodone 30 milligrams. So
13 these are just very focused analyses on specific -- these
14 specific opioids and at their specific dosages.

15 **Q** Okay. And let's look to the next slide. And I think
16 we have the visual representation that some folks might find
17 easier to digest.

18 And what are we looking at here?

19 **A** So this is now just showing the fraction of MMEs that
20 were dispensed for in this case oxy 30 at each of the
21 particular pharmacies. So if you look at the Walmart
22 pharmacies on the right, you know, each of these pharmacies
23 is dispensing in terms of MMEs somewhere between .1 percent
24 of the overall total MMEs for oxy 30 in Lake and Trumbull
25 County, up to, like, 1 percent for the Walmart in Madison.

1 So these percentages by comparison to these three
2 independent pharmacies are much, much smaller. So
3 Overholt's, Franklin, and Bellevue, respectively contribute
4 9.8 percent, 17.6 percent, and 8.7 percent of the total MMEs
5 for oxy 30 in the two counties.

6 **Q** And if you add up all of the five Walmar's share of
7 oxy 30 for Lake and Trumbull County, is that greater than
8 any of the individual independent pharmacies listed here?

9 **A** Yes. So if you add up those five percentages, in
10 other words, you combine all the Walmar's and you look at
11 the total MMEs for oxy 30 for those Walmar's, the total
12 share is 1.9 percent. And that's less than any single
13 independent pharmacy that I ended up showing you.

14 **Q** All right. Let's look at the next slide. So you did
15 the same thing for oxy 80; is that right?

16 **A** Yeah, that's correct.

17 **Q** And it looks like the Walmart numbers here are even
18 lower for oxy 80; is that right?

19 **A** Yeah, it's basically the same kind of story. The
20 Walmart shares are smaller than what you just saw for oxy 30
21 on average. And so if you end up adding up the total
22 contribution for Walmart for oxy 80, they consist of a total
23 of 1 percent of the entire set of MMEs for Lake and Trumbull
24 Counties.

25 And if you compare to Overholt's, Franklin, and

1 Bellevue, they have a total MME dispensing shares of 20.3
2 percent, 17.3 percent, and 4.3 percent.

3 **Q** Okay. Next slide, please.

4 And, Dr. Glickman, what are we looking at here?

5 **A** So, okay, so shifting a little bit, this is a quote by
6 Kyle Wright, who was a DEA unit chief of Targeting and
7 Analysis, and this is from a deposition that he gave in
8 February of 2019.

9 **Q** And did you review this in preparation for your
10 report?

11 **A** Yes, I did. I reviewed the deposition transcript.

12 **Q** Okay. And what is this slide showing us?

13 **A** So the questioner asked him: Is it accurate to say
14 that you knew that it was common for legitimate pharmacies
15 to have a ratio of approximately 20 percent of controlled to
16 80 percent noncontrolled?

17 And his answer was: In that area, yes.

18 **Q** Okay. So let's look to the next slide then.

19 And is this another summary that you created?

20 **A** Yes. So this is another summary I created.

21 MS. FUMERTON: And for the record, it's
22 WMT-MDL-01540.

23 **Q** And can you please explain what you did here.

24 **A** Sure. So this is using a different data set. This is
25 using the Walmart's Know Your Customer data set. So what

1 they've been doing is they've been compiling information
2 about each of their pharmacies just to understand their
3 practices.

4 So what I was able to pull off this spreadsheet is
5 essentially the percentage of controlled substances that
6 were prescribed divided by -- out of the total number that
7 they were prescribed in any given quarter of the year.

8 So what you're seeing, for example, say, the -- you
9 know, the number that's to the top and the left, that 11.9
10 percent?

11 I don't know if you want to highlight that.

12 **Q** I guess 11.0 percent --

13 **A** I think it's 9.

14 **Q** Oh, on the left. I see. I was looking to the right.

15 **A** Yeah. Did I say right? Yeah, when I said right, I
16 meant left.

17 **Q** You were right, I was wrong.

18 **A** Right. So the 11.9 percent is among all the
19 prescriptions that were dispensed -- among the prescriptions
20 that were dispensed at Walmart pharmacy 1857 in the first
21 quarter, the first quarter of the fiscal year 2016, which,
22 by the way, happens to correspond to February, March, and
23 April of 2015.

24 If you examine the percent of controlled substances
25 that were prescribed, they total 11.9 percent out of the

1 total prescriptions.

2 **Q** And just to be clear, are controlled substances all
3 opioids?

4 **A** Controlled substances include opioids, but they also
5 include other kinds of prescriptions. For example, anabolic
6 steroids, narcotics, depressants. So other kinds of
7 controlled substances besides opioids.

8 **Q** And you mentioned Walmart's fiscal year, and I think
9 you described what fiscal -- the first quarter would be.
10 But generally speaking, when does the Walmart fiscal year
11 run, do you know?

12 **A** So the Walmart fiscal year runs from February to
13 January. So when you're seeing these fiscal years of 2016,
14 2017, and 2018, you should probably be thinking calendar
15 years 2015, 2016, 2017, because the only representation is
16 just like this one month. Like the January of that year
17 that's listed is actually part of the data set.

18 **Q** And looking at all of these individual numbers for
19 each of the five Walmart pharmacies, are any of them close
20 to 20 percent?

21 **A** No. All those numbers, every single one of them, is
22 less than 20 -- that 20 percent that was part of the Kyle
23 Wright deposition.

24 MS. FUMERTON: And just to prove my earlier
25 statement that I'm losing my eyesight, my trusted colleague

1 tells me that this document is actually marked
2 WMT-MDL-01549. I think I misspoke earlier and called that
3 last "9" a "0."

4 **Q** So let's turn to the next page. So what is
5 represented here?

6 **A** All right. So going back to the theme of taking this
7 tabular data and turning it into something that's a little
8 easier on the eyes, so what we have is essentially this
9 blue -- this blue dash line where it says DEA, that's that
10 20 percent. That's the 20 percent that was quoted in the
11 deposition.

12 And then if you examine the -- those blue dots that
13 are kind of hovering around this 10 percent line, that shows
14 all of those different -- for each of the different five
15 Walmart pharmacies, it's showing the average over each
16 fiscal year the percentage of controlled substances that
17 were dispensed.

18 So you see like in the little region that says fiscal
19 year 2016, there are five dots. Each of those individual
20 five dots represents the average controlled substance
21 fraction for that fiscal year. And it's showing that like,
22 on, you know, the averages are all kind of hovering around
23 10 percent.

24 **Q** Thank you, Dr. Glickman.

25 All right. Let's look -- switching subjects slightly,

1 what is depicted in this next summary?

2 **A** So this is a slide that represents the total
3 Walmart -- the total annual prescriptions dispensed by
4 Walmart per capita for oxycodone and hydrocodone, and it's
5 probably worth breaking it down a little bit.

6 That first column that says "population," those are
7 the populations of Lake County, Trumbull County, and the
8 Lake and Trumbull County, and those are numbers that I
9 pulled from Dr. McCann's reports.

10 The "total prescriptions" is prescriptions from
11 Walmart dispensing data, and these are basically just
12 counting the number of prescriptions of oxycodone,
13 hydrocodone, in each of these counties.

14 And so in order to get the annual prescription per
15 capita, you just simply divide the number of total
16 prescriptions of the opioid divided by the total population
17 of the area.

18 **Q** Okay. And let me stop you there. I have a few more
19 questions about this one.

20 MS. FUMERTON: But for the record, this
21 particular summary you created is WMT-MDL-01536.

22 **Q** And the jury has heard several times from plaintiffs'
23 counsel about the number of pills per man, woman, and baby.

24 With respect to this particular chart, is this a
25 different perspective of how to look at the volume that's

1 being distributed?

2 **A** Yeah, this is an alternative way to capture that type
3 of information.

4 **Q** Because people are not dispensed one pill, they're
5 dispensed by prescription; is that right?

6 **A** That's my understanding, yes.

7 **Q** And so if we look at oxycodone specifically, and then
8 I want to sort of just ask what the .016 number represents
9 under "annual prescriptions per capita."

10 **A** So that .016 comes about by taking the total number of
11 oxycodone prescriptions in Lake and Trumbull County by
12 Walmart and dividing it by the population as represented by
13 this 439,668. And that .016, you know, one way to
14 understand it is that it basically is saying that 16 people
15 out of a thousand on average are receiving oxycodone
16 prescriptions in Lake County.

17 **Q** And that's per year?

18 **A** I'm sorry, per year, per year, on an annual basis.

19 **Q** Okay. Switching subjects. Let's go to the next
20 slide, please.

21 I think you testified earlier that you reviewed both
22 Mr. Catizone's expert report as well as Dr. McCann's expert
23 report. And just to orient everyone, Mr. Catizone
24 identifies certain red flags and then Dr. McCann purportedly
25 applied those to the data.

1 Is that a fair assessment?

2 **A** That's my understanding.

3 **Q** Okay. So just generally speaking, what are some of
4 your overall observations, and then we'll walk through these
5 analyses.

6 **A** Right. Well, as you see, there are a bunch of
7 different observations that I'll be making generally having
8 to do with the dispensing analysis. It might be helpful
9 just to kind of walk through them one by one.

10 **Q** Okay. We'll do that.

11 Why don't we go to the next page then, the next slide,
12 please.

13 And so is this a summary that you created?

14 **A** Yeah, this -- yes, this is a summary I created.

15 MS. FUMERTON: And for the record, it's
16 WMT-MDL-01577.

17 **Q** And what did you do here?

18 **A** Right. So by way of setting this up, I assume the
19 jury has been brought up to date on the red flagging of
20 prescriptions.

21 **Q** Yes.

22 MS. FUMERTON: For the jury's benefit, the
23 witnesses testifying don't hear the testimony of everybody
24 else who's testified already in the trial.

25 **Q** So, yes, they have heard about Mr. Catizone's 16 red

1 flags.

2 **A** Okay. So what we're seeing here is we have the -- we
3 have basically two numbers and then from these two numbers
4 we're going to derive this .9 percent in the last column.

5 The first number is essentially taking all of the red
6 flag prescriptions by Walmart in the period 2006 to 2014 and
7 measuring the total MMEs that are -- total MMEs represented
8 by those red flag prescriptions. So that's a total MME for
9 red flag prescriptions.

10 And the second number is the total MMEs distributed to
11 dispensers in Lake and Trumbull County. So this is the
12 total MMEs in the county that are dispensed by all
13 dispensers.

14 And so if you take the ratio of the first column, the
15 total MMEs that were due to the Walmart-flagged
16 prescriptions and divide that by the total MMEs dispensed in
17 the entire county, that number comes out to under 1 percent.

18 **Q** I think we have a visual representation of that on the
19 next slide.

20 So basically can you please explain once we get this
21 oriented, sort of what then does that .9 percent represent?

22 **A** Right. Again, this .9 percent basically says if you
23 take the flagged prescriptions, flagged prescriptions by
24 Walmart, they contribute .9 percent of the entire set of
25 MMEs that were dispensed in Lake and Trumbull County.

1 **Q** Let's go to the next slide.

2 Is this also another observation you made about the
3 flagging in Dr. McCann's algorithm as applied to the data?

4 **A** Yes, this is.

5 MS. FUMERTON: And for the record, this is
6 WMT-MDL-0155. I don't know how many 5s I've said. It's
7 WMT-MDL-01550.

8 **Q** Could you explain what you're depicting here?

9 **A** Sure. So for every prescription that's in the
10 dispensing data, one piece of information that's there is
11 the supply days, like how many days the prescription is
12 supposed to last.

13 So what you can do is you can take all of the
14 prescriptions and chop them up into different groupings
15 depending on how long the supply lasts.

16 So if you look at the columns that correspond to 1 to
17 7 days, 8 to 14 days, and so forth, each of those is
18 groupings of prescriptions that correspond to the different
19 supplies of the opioid.

20 And so what you see is that, you know, of all the --
21 of all the patients in the data set, there are 49.9 percent
22 of them that were dispensed opioids that lasted between 1
23 and 7 days and then, you know, 14.4 percent is for 8 to 14
24 days, and so forth.

25 What's relevant here is that there's Ohio

1 Administrative Law, the Ohio Administrative Code defines
2 acute pain to be pain that lasts no more than six weeks.
3 And so what we did was we ended up looking at the
4 prescriptions that corresponded to lengths of supply that
5 was 42 days or less. So those first four columns
6 corresponding to 1 to 7 days up through 31 to 42 days, if
7 you aggregate them together, that's going to give you that
8 first column.

9 **Q** And is 42 days 6 weeks?

10 **A** 42 days is 6 weeks because it's 6 times 7. That's
11 something we learned at Harvard.

12 **Q** Let's turn to the next page, this visual depiction.

13 **A** Actually before you do, I just want to make the quick
14 point that the first row corresponds to all patients, all
15 prescriptions, and the second row corresponds to patients
16 that have flagged prescriptions.

17 **Q** I should have sort of clarified that point too.

18 So when you say all patients, is that all patients in
19 Lake and Trumbull County for all pharmacies, or is this for
20 Walmart?

21 **A** This is just for Walmart, all Walmart patients.

22 **Q** And the same thing with patients with flagged
23 prescriptions, it's Walmart prescriptions?

24 **A** This all refers to Walmart patients.

25 **Q** Okay. Let's look at the next page then.

1 And so again, what are you visually depicting here
2 then?

3 **A** So this is just a visual representation of that first
4 row. So it's just reminding you that 82.6 percent of all
5 the patients had prescriptions that were lasting six weeks
6 or less.

7 And I should mention also, I forgot to mention this,
8 that's within the 365-day period. So this is -- you know,
9 it's measuring just with enough gaps in between because, you
10 know, patients can come in for one acute episode and then a
11 year later have another acute episode, and those are
12 considered separate acute episodes.

13 **Q** So, for example, a patient could have a tooth
14 extraction in year one and then in year three break a leg?

15 **A** A knee break or something, yeah.

16 **Q** Let's look to the next slide and the next summary you
17 created.

18 MS. FUMERTON: For the record, this is
19 WMT-MDL-01583.

20 **Q** And what is being depicted -- or what have you
21 summarized here?

22 **A** Right. So now what we can do is for, again, all these
23 sets of prescriptions we can see who the -- who the patient
24 is that was prescribed. And what we can do is we can see,
25 well, okay, so for a flagged prescription, whether or not

1 they had previously had a prescription filled at that
2 Walmart.

3 So, like, if you're -- you know, if you fill a -- if
4 you had a prescription filled at the Walmart and you happen
5 to have a -- that's a flagged prescription, we can go back
6 and see whether you have had a prescription previously.

7 And so these are two different versions of the data
8 set. There's the full flagged data set which consists of
9 49,243. That's the second row in these two tables.

10 So out of the 49,243 full set of flagged
11 prescriptions, 44,000 of them involve patients that had a
12 prior fill.

13 **Q** And so just to make sure I'm understanding, that means
14 that there was -- the patient had a flagged prescription,
15 but that patient had also been at the Walmart filling
16 another prescription earlier?

17 **A** That's correct.

18 **Q** And so perhaps then, you know, you could say that the
19 pharmacist who's filling that prescription has at least seen
20 that patient or that Walmart Pharmacy has at least seen that
21 patient more than once and may know who that patient is?

22 **A** If it's the same pharmacist, yeah, I suppose.

23 I want to quickly mention, in the first row where it
24 mentions this 1800, which we'll be talking about I think
25 later, this is a particular subset of the set of flagged

1 prescriptions.

2 Is it worth mentioning?

3 **Q** Let's clarify that.

4 So the jury has heard about the sample sets, but I
5 know that you had involvement with that as well. So why
6 don't you just briefly explain what the 1800 represents and
7 then what the 49,000 represents.

8 **A** Sure.

9 So I guess more to remind you, I assume, at one point
10 I was asked to randomly generate a set of 1800 -- 1800
11 prescriptions out of the full 49,243 for follow-up
12 information to get extra information about those particular
13 prescriptions.

14 I'll be describing a little bit later some of the
15 details of how I generated that data, but for purposes of
16 this analysis, if we focus on that particular 1800, we get
17 sort of a similar percentage of prescriptions that have a
18 patient with a prior fill at the same Walmart store.

19 So in the case of the 1800, we have 93.6 percent, and
20 in the case of the full set of flagged prescriptions it's
21 91.1 percent.

22 **Q** So I'm going to say this wrong because I'm not a
23 statistician, but if we want to think about it, the 1800 is
24 the sample set of the red flag prescriptions that Dr. McCann
25 identifies? It's a subset -- so let me back up.

1 The 49,000 is the total number of red flag
2 prescriptions that Dr. McCann identifies applying
3 Mr. Catizone's red flags; is that right?

4 **A** Yes, that's my understanding.

5 **Q** And then the 1800 is a subset of that 49,000?

6 **A** The 1800 is a subset that I generated.

7 **Q** So if we go to the next slide, I think we have a
8 visual representation of that.

9 And so I think you went through in detail in the last
10 chart, but just, you know, generally, what are we looking at
11 here then?

12 **A** Right. See, these are exactly the same percentages
13 that were on the table. So what we're seeing is that for
14 the sample set of 1800, 93.6 percent of them involved
15 prescriptions where the patient had a prior fill at that
16 Walmart. And then basically the same idea for the full set
17 of flagged prescriptions, in this case it's 91.1 percent.

18 **Q** Moving on to the next set.

19 Did you create this summary which is marked
20 WMT-MDL-01584? And if yes, what is it showing?

21 **A** Yes. So I created this.

22 So this is now -- it's almost the same kind of
23 analysis that we did in the last table, but now from the
24 point of view of the prescribers. So we can look at every
25 single one of these prescriptions, see the prescriber who is

1 involved, you know, often a doctor, and we can see what
2 fraction of those prescriptions involved a prescriber that
3 had filled a prior prescription at that Walmart pharmacy.

4 **Q** And so if we turn to the next slide, is this a visual
5 representation of that data?

6 **A** Yeah. So this is, again, a summary, more visual
7 summary. And what you can see is that in the sample set
8 there's 94.6 percent of the prescriptions involved a
9 prescriber who had had a prior fill at that Walmart, and
10 then similarly for the full set of flagged prescriptions
11 it's 94.7 percent.

12 **Q** Okay. Let's go to the next slide, please.

13 And as we just discussed, the jury has heard about
14 Mr. Catizone's red flags. And can you just describe what's
15 being depicted here on this slide?

16 **A** Sure. So this is, again, another portion of the map
17 of some of the relevant areas. This is going to be very
18 particular to red flags 1 and 2; 2 in particular we're going
19 to focus on in the next slide.

20 So the basic idea here is this circle that is drawn
21 around Cleveland, if -- the red flag -- the red flags for
22 flags 1 and 2 are essentially that a prescription is flagged
23 if the pharmacy where the patient filled their prescription
24 is more than 25 miles away from their residence. And flag 2
25 is the same thing except where the prescriber was,

1 typically, their physician.

2 So the reason Cleveland has some particular
3 significance here is that, you know, suppose you're somebody
4 who lives in Trumbull County, but all of your healthcare is,
5 say, at the Cleveland Clinic. Well, according to
6 Dr. McCann's methods, then any prescription that you get
7 that is prescribed by a prescriber at the Cleveland Clinic,
8 it's going to get red flagged. That's just merely because
9 you ended up going to the Cleveland Clinic to get your
10 medication prescribed.

11 **Q** And so let's look -- I have a couple questions about
12 that, but let's look at the next slide, and then I can ask
13 my question to clarify that.

14 So what are we looking at here then?

15 **A** Okay. So we just copied over the map that's on the
16 left. And what I'm showing on the right here is if you
17 consider all of the flagged opioid prescriptions where red
18 flag 2, which is, again, using the distance from the
19 patient's home to the prescriber, again, typically a doctor
20 but not always, 33 percent of those prescriptions were red
21 flagged in this data set, in the dispensing data set.

22 **Q** And the jury's heard some testimony that, okay, maybe
23 the 25 miles is not a hard limit, but I want to understand
24 how Dr. McCann actually applied it.

25 If a patient traveled 24.9 miles to its provider, his

1 or her provider, would that prescription be flagged?

2 **A** That prescription would not be flagged because it is
3 within 25 miles.

4 **Q** And if the same patient traveled another few blocks,
5 25.1 miles, would that prescription now become flagged?

6 **A** Yeah, then that prescription becomes flagged because
7 it's outside the 25-mile radius.

8 **Q** So the 25 miles was applied by Dr. McCann as a rigid
9 limit; is that a fair characterization?

10 **A** I think that's right, yes.

11 **Q** Let's turn to the next slide.

12 MS. FUMERTON: And for the record, this is
13 WMT-MDL-01553.

14 **Q** And is this another summary that you created from the
15 data?

16 **A** Yes, this is.

17 **Q** And did you summarize here?

18 **A** Right. So again, using this -- the entire set of
19 prescriptions in the Walmart data set, we can determine that
20 there are 10,759 unique prescribers. Of the ones that
21 are -- of those set of prescriptions, if you look at all of
22 the flagged prescriptions, they correspond to 3587 unique
23 prescribers.

24 So in other words, out of the total number of
25 prescribers represented in the prescription data set, there

1 are one-third of them that are being flagged, or they're
2 flagging prescriptions that involve one-third of the
3 prescribers.

4 **Q** And just so the jury is clear about this, so for the
5 Walmart data alone, how many different doctors were
6 flagged -- or had prescriptions that were flagged under
7 Mr. Catizone and Dr. McCann's methods?

8 **A** Right, so that should be 3587. There are 3587
9 prescribers that ended up getting flagged by virtue of their
10 prescriptions getting flagged.

11 **Q** And so that's 3,587 prescribers?

12 **A** So that's 3,587.

13 **Q** And if you go to the next slide, is this a visual
14 representation of that?

15 **A** Yes, it is.

16 **Q** And so in other words, I think you said this, does
17 Mr. Catizone and Dr. McCann's algorithm flag one out of
18 every three doctors at Walmart's --

19 **A** Okay. So on average, it's flagging one out of every
20 three doctors by virtue of the prescription being flagged.

21 **Q** Let's do one before maybe we'll take a break.

22 This is a summary that is marked WMT-MDL-01581. And
23 the jury has heard testimony about Mr. Catizone's red flag
24 number 9.

25 What did you summarize here?

1 **A** Right. Again, just to remind everybody, that red flag
2 9, as it says in footnote number 2, is that a patient was
3 dispensed two short-acting opioid drugs on the same day.

4 So what I did was in the first set of columns where it
5 says 63 and 1981, those are just the count of the number of
6 those prescriptions that were flagged by red flag number 9.

7 What I computed was the total number that were flagged
8 where one of those two prescriptions was methadone.

9 **Q** And you are not an expert of whether or not methadone
10 is a short-acting or a long-acting --

11 **A** I am not.

12 **Q** The jury has heard from other witnesses though as to
13 whether or not methadone should appropriately be considered
14 a short-acting or a long-acting opioid. And so if methadone
15 is not a short-acting -- let me start over.

16 If methadone is not a short-acting opioid but is in
17 fact a long-acting opioid, what does this analysis tell us?

18 **A** Well, I mean, under the assumption that you're
19 describing to me, it would seem that the intent of this red
20 flag is not appropriate if methadone is one of these two
21 opioids.

22 **Q** Because what percentage of the sample set
23 prescriptions that were flagged by red flag number 9 were
24 flagged because methadone was included?

25 **A** Well, so it seems that for the full set of red flag 9

1 prescriptions, 48.2 percent of them were flagged that
2 included methadone as one of the two opioids. And for the
3 sample set it was 58.7 percent.

4 **Q** And if we turn to the next slide, do we have a visual
5 representation of that?

6 **A** Right. And so those percentages that I just mentioned
7 are just being shown in these pie charts here. So in the
8 case of the sample set, it's 58.7 percent, and in the set of
9 all flagged prescriptions it's 48.2 percent.

10 **Q** To say this in other words, if methadone should not
11 have been included, does this mean that red flag number 9 as
12 applied by Dr. McCann over-flagged prescriptions?

13 **A** If you assume that methadone should not be included in
14 those pair of opioids, then it would -- then these should
15 not be included in the red flags.

16 **Q** But Dr. McCann did include them, right?

17 **A** Yeah, my understanding is he included them, yes.

18 MS. FUMERTON: Your Honor, I'm about to switch
19 to another subject. Is now a good time for a break?

20 THE COURT: Okay. Ladies and gentlemen, we'll
21 take our mid morning break. 15 minutes. Usual admonitions.
22 And then we'll pick up with Dr. Glickman's testimony.

23 (The jury is not present.)

24 MS. FUMERTON: Your Honor, may Dr. Glickman
25 also come down?

1 THE COURT: Sure.

2 Doctor, you can step down.

3 THE WITNESS: Okay.

4 (Recess taken at 10:26 a.m.)

5 (Jury present in open court at 10:47 a.m.)

6 THE COURT: Okay. Please be seated.

7 Dr. Glickman, you're still under oath from this
8 morning.

9 And Ms. Fumerton, you may continue, please.

10 MS. FUMERTON: May it please the Court?

11 THE COURT: Yes.

12 BY MS. FUMERTON:

13 **Q** Dr. Glickman, I think we have two more sets of red
14 flags to go through and then talk about some confidence
15 intervals, and at least I'll be done with this portion of
16 your testimony.

17 So where we left off I think was on slide 34. If we
18 could pull that up.

19 And while we're doing that, I'll just sort of set the
20 stage. As I mentioned earlier, the jury has heard from
21 Mr. Catizone and Dr. McCann, and specifically from
22 Mr. Catizone as to what his red flags mean. And the jury
23 heard testimony that with respect to red flags 10 and 11,
24 that he was attempting to apply CDC guidance.

25 And so did you create the summary that is currently

1 being displayed?

2 **A** Yes, I have.

3 MS. FUMERTON: And for the record, it's
4 WMT-MDL-01585.

5 **Q** And could you please explain to the jury what you
6 summarized here.

7 **A** Sure. So I guess you're probably aware that red flags
8 10 and 11 are supposed to pick up dosages that are, you
9 know, fairly substantial.

10 There's guidance by the CDC that basically says that
11 as -- that if you are a nonprimary care doctor who's
12 prescribing for -- for instances of patients who are being
13 seen by nonprimary care physicians that are experiencing
14 chronic pain, not acute pain, then these guidelines apply,
15 these CDC guidelines apply.

16 So the way this flag is set up, it doesn't actually
17 specifically include these -- you know, the specific aspect
18 of the nonprimary care doctor and that it's chronic pain.

19 So if you look at the first column, you'll see that
20 the numbers are for the entire set of flagged, red flag 10
21 and 11. They're 1,102 -- I'm sorry, I can't read numbers --
22 1,012 prescriptions that were flagged and then the sample
23 said it was 43.

24 But out of those, the numbers, if you apply the actual
25 CDC guidelines based on the, you know, based on chronic pain

1 and on the nonprimary care, there are 983 of them that
2 shouldn't have been flagged if the guidelines apply. And so
3 that reduces the set of flagged prescriptions.

4 And so the number that were -- the share of the
5 prescriptions that were flagged by not incorporating the CDC
6 guidelines is 95.3 percent in the sample set and 97.1
7 percent in the full set.

8 **Q** And I just want to make sure that the testimony is
9 clear. So the CDC guidelines apply to primary care chronic
10 patients; is that fair?

11 **A** Primary care chronic patients, right.

12 **Q** And so then what you did is looked to see whether or
13 not when Dr. McCann applied red flags 10 and 11, whether he
14 applied those flags only to primary care chronic patients or
15 not; is that fair?

16 **A** That's correct.

17 **Q** And so what you found, then, is that for the
18 percentages that are reflected in your chart, that there are
19 a number of red flag -- or number of prescriptions that were
20 flagged by nonprimary care and for acute patients; is that
21 fair?

22 **A** I think that's -- yeah, that's fair.

23 **Q** So look at, the next page I think is the sort of
24 visual representation of that.

25 And so what are we seeing here then?

1 **A** Well, so you're seeing essentially the visual
2 representation of the data that's on the table. So once
3 again, out of the entire set of prescriptions that were
4 flagged, 95.3 percent of them the CDC guidelines don't apply
5 in the case of the sample set, and the 97.1 percent of the
6 prescriptions where the CDC guidelines don't apply to the
7 entire set of flagged prescriptions by flags 10 and 11.

8 And so only 4.7 and 2.9 percent remain after applying
9 the guidelines.

10 **Q** Let's go to the next summary, please.

11 MS. FUMERTON: And for the record, this is
12 WMT-MDL-01582.

13 **Q** And did you create this summary?

14 **A** Yes, I did.

15 **Q** And can you please explain to the jury what this is
16 summarizing.

17 **A** Sure. So this is an instance where we're examining
18 red flag 15, and red flag 15 has to do with, you know,
19 checking combinations of opioids. So the specific red flag
20 is a patient was dispensed more than 210 days of supply of
21 all opioids combined in a six-month period.

22 **Q** And let me just stop you there, because the jury has
23 heard testimony from other witnesses as to, you know,
24 whether it's appropriate or not to include both short-acting
25 and long-acting opioids in that calculation.

1 But what did you conclude as to what was actually
2 done?

3 **A** Well, what I examined was whether in -- for the
4 prescriptions that were flagged by red flag 15, whether they
5 included a short-acting and a long-acting opioid in the set
6 that was in the -- in any six-month period. And what I
7 found is that roughly 54 percent in the sample set -- 55
8 percent in the sample set had both a short-acting and
9 long-acting opioid.

10 And then in the full set of flagged prescriptions of
11 red flag 15, 54.7 percent had one short-acting, one
12 long-acting opioid.

13 **Q** Okay. Last subject. Let's turn to the next slide,
14 please.

15 And I want to set this up a little bit just so the
16 jury understands what we're talking about here.

17 You talked earlier about the sample set and you had
18 some involvement with that, but I want to back up a little
19 bit.

20 Is it your understanding that essentially some
21 mechanism that you were not involved with was set up to
22 figure out how to choose the randomly selected
23 prescriptions?

24 **A** Yeah, there was a framework that was already specified
25 for how the sample set should be generated.

1 **Q** Did you understand that that was the Court had set up
2 that framework?

3 **A** My understanding, it was the Court that set that up.

4 **Q** And so once that framework had been set up, what was
5 your involvement with obtaining the sample set?

6 **A** Right. So what I was asked to do, I was provided the
7 entire set of Walmart prescriptions that were red flagged.
8 And what I was instructed to do was for each individual year
9 in the set of data that I had, which went from 2010 to 2018,
10 I was asked to randomly generate 200 prescriptions from each
11 of those years separately. And that would give over the
12 nine years a total of 1800 separate prescriptions.

13 **Q** And you understand that that was something that was
14 done with respect to each of the defendants' prescriptions
15 that had been flagged by Dr. McCann?

16 MR. WEINBERGER: Objection.

17 May we be heard, just very short?

18 (At side bar at 10:55 a.m.)

19 MR. WEINBERGER: Your Honor, the reason for
20 the objection is that this is -- you ordered or -- yes, you
21 ordered 10 years of 200 per year. Walmart only produced 9
22 years; that's why they've only produced 1800, whereas the
23 other defendants complied with your order and produced all
24 10 years.

25 So this setup isn't correct.

1 THE COURT: I agree, Ms. Fumerton, so you're
2 going to have to -- you're going to have to correct it
3 somehow, or I'll have to. I mean, I --

4 MS. FUMERTON: Your Honor, just to be clear,
5 I'm not sort of quibbling with that. I was just trying to
6 establish that this is a random set.

7 THE COURT: I understand that. That was okay.
8 But what you brought out is factually incorrect.

9 MS. FUMERTON: Well, Your Honor, to be clear
10 about this, and we were up front. There was never any
11 complaint about this at any point in time. It was actually
12 back to 2010.

13 No, I mean, Mr. Weinberger can laugh all he wants, but
14 it's true.

15 THE COURT: Whatever. Whether there was a
16 complaint or not, what you brought out is now factually
17 incorrect.

18 MS. FUMERTON: All right. I can clear it up.

19 THE COURT: All right.

20 (In open court at 10:56 a.m.)

21 BY MS. FUMERTON:

22 Q Dr. Glickman, I just want to clarify something with
23 respect to the sample set.

24 You understood that sort of the framework that had
25 been set up was that there would be a random sample of 200

1 prescriptions per year that were chosen. And they're
2 random, nobody had any influence as to whether it was going
3 to be prescription A or prescription B or prescription C
4 that was chosen, it was purely random?

5 **A** Yes, that's how it was generated.

6 **Q** And it was applied to the data sets for each
7 defendant. So in Walmart's case, since Walmart had only
8 data through 2018 that Dr. McCann had analyzed, that was
9 applied from 2010 to 2018; is that fair?

10 MR. WEINBERGER: Objection, Your Honor.

11 THE WITNESS: Can I respond?

12 MS. FUMERTON: I think we need to wait for the
13 Judge.

14 THE COURT: Overruled.

15 **A** So basically I was given a spreadsheet that contained
16 tabs for years 2010 through 2018, and I was asked to
17 generate 200 randomly chosen prescriptions from within each
18 of those tabs.

19 **Q** And the 2010 to 2018 data came from Dr. McCann; is
20 that what you understood?

21 **A** I understood that, yes.

22 **Q** Okay.

23 **A** Those were the red-flagged prescriptions.

24 **Q** Okay. So let's talk about confidence intervals. In
25 layman's terms -- I will confess this is getting into the

1 most sort of specific type of statistic-y -- I don't know if
2 that's even a word -- type of stuff, but what is a
3 confidence interval?

4 **A** Right. So this is starting to get -- you know,
5 everything you've seen so far has been just, like, numerical
6 summaries. Now we're starting to get into the guts of
7 statistical principles.

8 So the whole idea here is that these 1800
9 prescriptions, as I understood, were going to be used for
10 assessing effective due diligence on these prescriptions out
11 of the 1800.

12 So for every one of these 1800, either the
13 prescription satisfied effective due diligence or it didn't.

14 **Q** And that was according to Mr. Catizone, is that what
15 you understood, or do you not even know how that analysis
16 was done?

17 **A** I only have a vague understanding of what that
18 analysis is.

19 **Q** From Mr. Catizone's report?

20 **A** Yeah, from Mr. Catizone's report.

21 **Q** So you had no involvement in assessing whether
22 something was diligence or not diligence?

23 **A** That's correct.

24 **Q** Okay. Go ahead.

25 **A** So the idea is that the whole exercise is -- you know,

1 is to look at -- or the plaintiffs are adding extra
2 information to those 1800 to be able to assess effective due
3 diligence of those 1800. But the final step is to
4 extrapolate from those 1800 to the total set of flagged
5 prescriptions. In Walmart's case, that's 49,243
6 prescriptions.

7 So that's the exercise.

8 So what you can do is based on the 1800, you can
9 determine essentially the overall percentage of effective
10 due diligence, and now what you're trying to do is you're
11 trying to essentially estimate the effective due diligence
12 of the 49,000.

13 You can't get that number exact, so instead what
14 statisticians typically do is they get a range of values.
15 So if I end up getting some number that comes from the 1800
16 as a measure of the percent of effective due diligence, I'm
17 not going to just simply report a single number that
18 summarizes the effective due diligence in this larger set.
19 I'll give a range of values, and that range of values is
20 often -- is called a confidence interval.

21 **Q** And so Dr. McCann, do you understand that he applied
22 confidence intervals to the data?

23 **A** I didn't see any application of confidence intervals
24 to any data, but in Dr. McCann's supplementary report he
25 described a procedure to produce confidence intervals for a

1 sample of 1800, which is precisely the sample that I
2 generated for the Walmart prescriptions.

3 **Q** And what were your conclusions about the formula? And
4 I know you created some slides because even I had a hard
5 time understanding this. So I'm going to completely turn it
6 over to you to walk us through this and explain sort of
7 what's happening here.

8 Is it helpful to go to the next slide?

9 **A** No, actually let me walk through these steps.

10 What I actually just described to you in words is
11 essentially the same thing that I have in order, but just to
12 anchor ourselves, let me just reread them.

13 So what happens is we start with the 49,243, and then
14 the way that I was asked to generate a random sample was to
15 divide the 49,423 [sic] into nine different sets which are
16 different by year. And it's important to understand that
17 not every year has the same number of flagged prescriptions,
18 some years have more than others.

19 So what I did then is that with each of these years'
20 worth of flagged prescriptions, I randomly -- using a
21 computer program, which actually -- well, using a computer
22 program, I generated random samples from within each of
23 those years, so I got 200 randomly-selected prescriptions
24 each year of this data set. And that gives me the total of
25 1800.

1 It is important to remember though that when I'm
2 generating 200 from one particular year and I'm generating
3 200 from another particular year, those are necessarily the
4 same fractions because of the different numbers of
5 red-flagged prescriptions total in each of those years.

6 All right. So then I relied on Mr. Catizone's
7 assessment of diligence for each of those prescriptions that
8 I had nothing to do with.

9 **Q** And you're not saying whether that was right or
10 whether that was wrong?

11 **A** I'm not opining on that at all.

12 **Q** Okay.

13 **A** And then there's a procedure that Dr. McCann wrote
14 about to be able to extrapolate that percent from the 1800
15 back to the 49,000 and provide this confidence interval.

16 And what I'm here to tell you today is that the
17 formula that he used is incorrect, based on my experience as
18 a statistician, and based on my training and my having
19 taught about confidence intervals for a good part of my
20 life. I know that the formulas that he used were incorrect.

21 **Q** And so can you explain, maybe do you have an
22 illustration as to sort of help the jury understand why they
23 were incorrect?

24 **A** Yeah, and there's -- there are several levels in which
25 the formula is incorrect, but I can illustrate this by just

1 using a made-up example.

2 **Q** Okay. Now the next slide?

3 **A** Yeah.

4 **Q** Great. Tell us when to go to the next slide.

5 **A** Okay. Right. So basically what I'm -- just to
6 simplify everything, suppose that you have an island that
7 consists of 10 circles and 10 dots. And so typically you
8 wouldn't know -- this is going to be like the 49,000
9 prescriptions. This is the population that we're going to
10 try to draw conclusions about.

11 So when you look at this island, pretend as if you
12 don't know that there are 10 -- the 10 circles and 10 black
13 dots. That's what we're going to try to learn once we get a
14 sample.

15 So it turns out the first step is to take this island
16 of 10 circles and 10 black dots and we're going to divide it
17 up into four different regions. And the reason I'm doing
18 that is I'm acting like I'm taking the prescriptions and
19 dividing them up into the different years.

20 There are nine different years, but just in this
21 illustration I'm just using four.

22 So the aspect of this that will end up leading to a
23 problem is that it may just so happen that when I divide
24 this island into the four different regions, they're not
25 going to divide evenly. Each region is not going to

1 necessarily be evenly white circle and black dot. It's not
2 going to necessarily be in this 50/50 percent.

3 So if you scroll forward. Suppose that when I just
4 happened to divide them up, this is how they divide up.

5 And if you go to the next slide, I'm taking these four
6 regions and I'm pulling them out.

7 Now, what's curious about this particular example,
8 there are two things to note. Again, I'm not choosing how
9 to divide up the island into these regions. These are just
10 like the years, the years 2010 to 2018, in the prescription
11 data set. Whatever they are, they are.

12 And so in this particular example, it turns out one of
13 the regions only has black dots, the second region only has
14 black dots, third region only has black dots, and the fourth
15 region has mostly circles.

16 Now what I'm going to do is I'm going to select
17 samples from each of those regions, much in the way that I
18 selected 200 samples of prescriptions from each of those
19 years. And if I select in this case two -- you know, two
20 dots or circles at random, well, in those first three
21 regions of the island I'm certain to get black dots because
22 that's all there are in those regions. In that last one
23 when I do the random sample of 2, I happen to get two white
24 circles, which is believable because it's mostly white
25 circles in that region.

1 So what I'm left with at the end of this procedure,
2 this two-step procedure, by starting with an island that had
3 50 percent black dots but then I divide it up into different
4 regions and then sample within each region, I end up getting
5 a set of dots where 75 percent of them are black and 25
6 percent of them are white.

7 Now, what McCann would then do is he would take those
8 75 percent and extrapolate back to the population and say,
9 well, my best estimate is that it's 75 percent black dots in
10 the population, and there's some range of values that are
11 surrounding it just to account for the uncertainty.

12 So this is a biased procedure. It's a biased
13 procedure in the sense that if you just simply look at the
14 sample set alone without having factored in dividing the
15 island into regions, or in the case of prescriptions
16 dividing the prescription set into different years, you
17 could go way wrong. You could get a very wrong answer.

18 And to be fair, there are computations that address
19 this problem, but Dr. McCann didn't apply them in his
20 description of the calculations.

21 **Q** Thank you, Dr. Glickman.

22 All right. So let's just wrap this all up. I think
23 we have a final slide here. We've looked at a lot of
24 different data, but sort of what are sort of three big
25 takeaways from, you know, what you've testified today?

1 **A** Right. So the takeaways are that, first of all, based
2 on the first set of summaries that I showed you, the Walmart
3 pharmacies really do have a fairly limited presence in Lake
4 and Trumbull County, as you've heard, the 3.15 percent
5 number of shares tossed around as well as the .9 percent of
6 the flagged prescription shares, so there's a small presence
7 of Walmart in the opioids in Lake and Trumbull Counties.

8 I discussed Mr. Catizone and Dr. McCann's red flag
9 algorithms and how there are certain concerns about how
10 they're being applied, and I described that for a whole
11 bunch of different red flags.

12 And then finally, I gave a little lesson on confidence
13 intervals and sampling, and described how things can go
14 wrong if you use Dr. McCann's procedure as he described in
15 his second report.

16 MS. FUMERTON: Thank you, Dr. Glickman.

17 I'm going to pass the witness now.

18 THE WITNESS: Thank you.

19 THE COURT: Okay. Anything from Walgreens or
20 CVS?

21 MR. STOFFELMAYR: No, Your Honor.

22 MR. DELINSKY: Nothing, Your Honor.

23 THE COURT: Thank you.

24 Then, Mr. Lanier, you're up.

25 MR. LANIER: Thank you, Judge.

1

- - - - -

2

CROSS-EXAMINATION

3

BY MR. LANIER:

4

Q Hello. I'm Mark Lanier. I met you in the hall for about two minutes before you got started this morning.

6

A Nice to meet you.

7

Q I'm going to be doing your cross-examination, all right?

8

9

A Okay.

10

Q I've got three stops on your road that I want to cover with you. The first one is I want to talk to you about some personal magic. The second thing, I want to talk to you about statistics as illusions. And then I want to talk about reality. All right?

11

12

13

14

15

A Okay.

16

Q And I start with personal magic because that's another aspect of you that you didn't share with the jury.

17

18

You've got -- you're a magician, aren't you?

19

A I am a magician.

20

Q You do sleight of hand tricks, don't you?

21

A Yes, I do.

22

Q All right. And those can be really impressive. One of the key ways of doing it is to distract someone so that they don't see what you've done. Fair?

23

24

25

A I would say I use magic more for entertainment than

1 for distraction.

2 **Q** No, I'm not saying you use it for distraction, but
3 when you are doing a magic trick, you will draw someone's
4 attention away from the actual physical sleight of hand,
5 right?

6 **A** I'm not sure I'd characterize it that way, but I'm
7 willing to stipulate.

8 **Q** Okay. Let's go to the second, because I want to talk
9 to you a little bit about statistics.

10 Now, you are a statistician, right?

11 **A** I am, right.

12 **Q** So you know that famous Mark Twain quote about
13 statistics, right?

14 **A** Which one is that?

15 MR. LANIER: (Writing) Sta-tis-tics.

16 Your Honor, I can't spell. Okay. Hold on.

17 On sta-tis-tics.

18 **Q** You know the Mark Twain quote?

19 **A** I have a feeling I know what you're going to say, but
20 it's not due to Mark Twain.

21 **Q** Well, he said it was Benjamin Disraeli --

22 **A** It was Disraeli.

23 **Q** -- and he wrongly cites Benjamin Disraeli, but he put
24 it in his autobiography, Mark Twain did, that there are
25 three kinds of lies: Lies, damned lies, and statistics.

1 You know that quote, right?

2 **A** I know that quote, yes.

3 **Q** It's pretty famous in circles of people who do
4 statistic work, right?

5 **A** And cross-examiners, yes.

6 **Q** Especially if they're cross-examining someone on
7 statistics. Because you can wind up doing some really funny
8 things with statistics that give an illusion that may not be
9 necessarily the truth, can't you?

10 **A** In the hands of lesser statisticians, I suppose that's
11 true.

12 **Q** Well, not just lesser statisticians. I suspect when
13 you teach class, you teach people that you can do all sorts
14 of things with statistics, don't you?

15 **A** I teach them how to appropriately use statistics.

16 **Q** And you teach them how that statistics can be used
17 disappropriately, and you show examples of that in your
18 classes, don't you?

19 **A** I don't recall ever doing that in my classes, no.

20 **Q** All right. Well, let me talk about whether or not
21 you've done that here, okay?

22 **A** Okay.

23 **Q** You put up pie charts like this, "patient's flag,"
24 "patient's flag .9 percent of Walmart's MME share in the
25 counties." "If you look at the total MMEs dispersed, only

1 .9 percent dispensed by Walmart and flagged by McCann."

2 MS. FUMERTON: Just so the record's clear, it
3 says "Plaintiffs'" not "patients."

4 MR. LANIER: I'm sorry. Plaintiffs'. Thank
5 you.

6 Q Do you see this pie chart, sir?

7 A Yes, I do.

8 Q And that gives an illusion of this being a really
9 insignificant part, doesn't it?

10 A I wasn't stating whether it's significant or
11 insignificant.

12 Q Because for you to state that would be to give a false
13 piece of conclusion, wouldn't it?

14 A Well, it's not my realm of expertise to say whether
15 it's appropriate or not appropriate.

16 Q But you will agree that the illusion here is that
17 that's such a small piece of pie, it really doesn't count?

18 A Well, you know, when I'm presenting in a tabular form,
19 it's often pretty difficult and very well known that it's
20 hard to sometimes recognize the meaning of numbers in a
21 table. Visualizations can often help.

22 Q Right. I just want to make sure that we're clear on
23 whether or not there's an illusion here.

24 What's the population of the United States?

25 A Off the top of my head, I don't know the answer to

1 that.

2 **Q** Off the top of my head, looking at Google while you
3 were on the stand, it was 329.5 million for 2020. All
4 right.

5 What's the population of Lake and Trumbull County?

6 **A** I don't know that answer.

7 **Q** Well, you had it in your charts. You were looking at
8 it earlier.

9 **A** Yeah, I don't recall offhand.

10 **Q** All right. Right at 450,000, all right?

11 Now, if I wanted to do a pie chart then comparing the
12 population of Lake and Trumbull County to the United States
13 of America, I could do that, couldn't I?

14 **A** Sure, you could do that numerically.

15 **Q** You could just get the old pie chart constructor
16 program and put 3.295, dot dot dot dot, excerpt 450,000,
17 right?

18 **A** Yeah, those are the numbers you put in.

19 **Q** And if you did that, you could get a pie chart that
20 would show what part of the United States of America is Lake
21 and Trumbull County, right?

22 **A** By population, yes.

23 **Q** And so if I were trying to argue in this case, oh,
24 gee, there's not an epidemic in Lake and Trumbull County,
25 there's nothing significant about them in the United States,

1 they're just .13 percent of the whole country, that's not
2 fair to say, is it?

3 **A** Well, I wasn't making that evaluation in the analyses
4 that I was doing.

5 **Q** Yeah, but answer my question, please, here.

6 That's not fair to say, is it?

7 **A** I don't think it's fair or unfair.

8 **Q** Well, yeah --

9 **A** It is what it is.

10 **Q** You can't say that the people of Lake and Trumbull
11 County and their epidemic are insignificant in the national
12 eye simply because their population is .136 percent, can
13 you?

14 **A** I would -- I don't know of anybody who would interpret
15 that pie chart that way. I certainly wouldn't.

16 **Q** Well, by the same token, people should not be
17 interpreting your pie chart to say that the .9 percent
18 dispensed by Walmart is insignificant, should they?

19 **A** I never said it was insignificant.

20 **Q** Because it could be quite significant depending upon
21 what it is, true?

22 **A** I have no basis for saying whether it's significant or
23 not significant.

24 **Q** But the lawyers sure shouldn't be using your testimony
25 to try to say it's not significant, should they?

1 MS. FUMERTON: Objection.

2 THE COURT: Sustained.

3 Q Sir, you are not providing testimony to the jury that
4 this is significant or insignificant, are you?

5 A That is correct.

6 Q By the same token, as we're on this question of
7 illusion, let's look at market share.

8 You testified about market share, correct?

9 A Of what now?

10 Q Market share of opioids. You looked at this chart,
11 "12 opioid drug shipments to pharmacies in Lake County and
12 Trumbull County."

13 Remember that?

14 A I do, yes.

15 Q And when you looked at that chart, you are first,
16 let's be clear, relying on Dr. McCann's work, aren't you?

17 A I am, yes.

18 Q You don't have any reason to think he was wrong there,
19 do you?

20 A I wasn't making any disputes about the data he was
21 using.

22 Q Yeah, you would not use his data if you thought it was
23 unreliable, would you?

24 A That's correct.

25 Q So now we look at what you did with the data.

1 You don't add up all of the defendants when you simply
2 reproduce his chart, do you?

3 **A** I wasn't trying to reproduce his chart.

4 **Q** Well, that's what we were given, is -- this is his
5 chart, isn't it?

6 **A** Well, yeah, that is his chart. That's from his
7 appendix.

8 **Q** Yeah. And this is what was shown to the jury that you
9 testified about, right?

10 **A** Correct.

11 **Q** And so you don't add up -- let's see, we've got
12 Franklin and Overholt's at the top.

13 You don't add up all of the CVS, Walgreens, Walgreens,
14 Walgreens, Walgreens, Walgreens, Walgreens, CVS, Walmart,
15 CVS, Walgreens, Walgreens, Walgreens, CVS, Walgreens,
16 Walmart, CVS, Walgreens, CVS, CVS, CVS, Walgreens, CVS,
17 Walmart, Walmart, CVS.

18 You don't add all of those up, do you?

19 **A** For what chart are you referring to?

20 **Q** I'm referring to your -- you use an MME chart. You
21 don't do a dosage unit chart, do you?

22 **A** You'll have to -- I think you'll need to specify which
23 exhibit you're referring to.

24 **Q** All right. We'll look at it as we keep going.

25 But at least you would agree it might be important to

1 add up all of the pills they're pumping into the county and
2 not simply look at one store, fair?

3 MS. FUMERTON: Objection.

4 THE COURT: Overruled.

5 **A** I was adding up all the MMEs across all the dispensers
6 in Lake and Trumbull County.

7 **Q** Well, not always, sir, because you produced charts
8 like this. "Contrast to independents dispensing levels."

9 Do you see that?

10 **A** So for this particular chart, I was comparing the
11 total MMEs for Overholt's versus the one Walmart store.

12 **Q** Yeah, and I'll ask you these questions in seriatim.
13 Do you see that is my first question?

14 **A** I sure do.

15 **Q** And in this chart, sir, what you did is not compare
16 Overholt's to all of the Walmarts that are pumping in in the
17 county, you compared them to one Walmart store, didn't you?

18 **A** That's correct.

19 **Q** And that's not the only time you did that. You did
20 that with other slides as well, didn't you?

21 **A** If you point to the exhibits, I can answer.

22 **Q** It's the very next one I've got up here now, where you
23 compared Franklin Pharmacy to one Walmart store, correct?

24 **A** That is correct.

25 **Q** Okay. And in truth, even just looking at the county

1 isn't necessarily doing a thorough and adequate job, is it?

2 **A** I'm not sure exactly what you're referring to.

3 **Q** Well, it's common sense, I would think, that the
4 counties don't give the full picture. Correct?

5 **A** The picture of what? I'm not sure what you're
6 referring to.

7 **Q** Of how many pills were put into the counties, of where
8 they came from.

9 **A** Well, one of my exhibits does actually include the
10 entire set of pills -- or the MMEs that were dispensed in
11 Lake County, Trumbull County, and the two combined.

12 **Q** But even that, sir, that's what I'm saying, the
13 counties don't give the full picture.

14 Have you -- look, I live in Houston. We have
15 hurricanes. We had one that just busted our chops.

16 **A** I remember that one.

17 **Q** And I want to tell you something. When the water
18 comes into the hallway, the flood doesn't just stop in the
19 hallway. It seeps into the bedrooms, it seeps into the
20 bathrooms, and it seeps into the living room and the
21 kitchen.

22 Did you know that?

23 **A** Yes, I did.

24 **Q** And the reason I say that is because you put up charts
25 like this talking about Walmart's limited --

1 MS. FUMERTON: Objection. We actually
2 didn't --

3 THE COURT: Overruled.

4 MS. FUMERTON: Your Honor, that chart was not
5 used today.

6 THE COURT: Well, is this in his report?

7 MS. FUMERTON: No, Your Honor.

8 MR. LANIER: It was produced to us last night
9 to be used today and --

10 THE COURT: Let's go on the headphones a
11 minute.

12 MR. LANIER: Your Honor, I can ask it a
13 different way.

14 THE COURT: All right, fine.

15 MR. LANIER: In the interest of time, I'll ask
16 it a different way.

17 THE COURT: All right, thank you.

18 BY MR. LANIER:

19 **Q** Sir, this will be my chart, not yours.

20 By the way, did you --

21 **A** You're taking credit for my work?

22 **Q** Okay. No, now I'm not.

23 So you did this chart, didn't you?

24 **A** Yes, I did.

25 **Q** Thank you. Then I can ask you about it.

1 Sir, these are the Walmarts that you took into
2 account, these five stores, isn't it?

3 **A** Yes. And those are the ones that I was asked to
4 consider.

5 **Q** So the fact that Hermitage, Pennsylvania, is 4.5 miles
6 from Trumbull County and there's a store just 4 1/2 miles
7 away, you didn't consider that store, did you?

8 MS. FUMERTON: Objection.

9 THE COURT: Overruled.

10 **A** I did not consider that. It was not part of the data
11 set that I was working with.

12 **Q** And that Greenville, Pennsylvania, is just 10 miles
13 from the county line; you didn't consider the Greenville
14 store either, did you?

15 **A** It was not considered as part of the data I was
16 analyzing.

17 **Q** And that Austintown -- or, no, is that --

18 MR. WEINBERGER: It's Austintown, yeah.

19 MR. LANIER: I'm sorry. It goes down here?

20 Okay. Here's my local guru.

21 Get over here, geek.

22 Oh, okay. Well, I thought Poland was in Europe.

23 **Q** Is this -- Austintown and Poland, you didn't consider
24 the stores there, did you?

25 **A** They were not part of the data set I worked with.

1 **Q** And I know where Ashtabula is because it's in a Bob
2 Dylan song. Do you listen to Bob Dylan?

3 **A** I never really followed Bob Dylan very carefully, I
4 was more of a Beatles guy.

5 **Q** "You're Gonna Make Me Lonesome When You Go."

6 "I'll look for you from Honolulu, San Francisco,
7 Ashtabula."

8 You didn't consider those stores, did you?

9 **A** I did not, no.

10 **Q** You didn't consider the stores in Chardon, Burton --

11 MR. WEINBERGER: "Chardon."

12 **Q** Okay -- in these other towns either, did you?

13 MS. FUMERTON: Objection, Your Honor. Could
14 we be heard?

15 MR. LANIER: I'll just do it this way, Judge.

16 THE COURT: All right. The jury is to
17 disregard the last question.

18 MR. LANIER: Yeah, I didn't say the name right
19 anyway.

20 **Q** My whole point is, you've narrowed your focus down to
21 these five stores, assuming that only pills from these five
22 Walmarts entered into those counties. Isn't that true?

23 **A** I did, but that was because I was responding to the
24 analyses that Dr. McCann was performing, so I was
25 essentially mimicking analyses using his data.

1 **Q** Well, don't blame him for what you're testifying for,
2 sir. You've got -- you're drawing your conclusions. That's
3 different than the conclusions he drew.

4 You understand that?

5 **A** Not entirely, no.

6 **Q** Okay. You weren't in here for his testimony, were
7 you?

8 **A** No.

9 MS. FUMERTON: Objection, Your Honor. We've
10 addressed this.

11 THE COURT: The jury is to disregard that.
12 Everyone knows he wasn't here because he wasn't allowed to.

13 **Q** Exactly. That's my whole point, sir. Everybody knows
14 you weren't in here for that. You haven't been able to read
15 it, correct?

16 **A** I read his reports, but I'm not aware of his testimony
17 here.

18 **Q** All right. So when you do this type of work and you
19 make these type of decisions, I've got to ask you this
20 question.

21 Did you see who the top five prescribers were for
22 Walmart?

23 MS. FUMERTON: Objection. Scope.

24 THE COURT: Overruled.

25 **A** What do you mean by "the top five prescribers were for

1 Walmart"?

2 Q Well, you gave testimony about how many repeat visits
3 there were.

4 A Yeah. I don't -- I can tell from the data set, but I
5 never bothered to look at it.

6 Q Here was your slide. "Patients with a prior fill at
7 Walmart stores."

8 You have looked at patients who had prior fills at the
9 stores, right?

10 A Yes, I did.

11 Q You also looked at prescribers who had been repeat
12 prescribers, didn't you?

13 A I did, yes.

14 Q So to put this into context, my question to you is,
15 did you happen to run a check to see who the top five
16 prescribers were getting their prescriptions filled at
17 Walmart?

18 A I did not run that analysis.

19 Q That might be important if we're going to decide if
20 their slice of the pie has a significant impact on the
21 community, true?

22 A I don't know. I don't know how to evaluate that.

23 Q Assume with me that Dr. Demangone had 148,000-plus
24 dosage units, more than the next four prescribers combined.

25 Did you take that into account?

1 MS. FUMERTON: Objection. Assumes facts not
2 in evidence.

3 THE COURT: Overruled.

4 **A** I did not take that into account.

5 **Q** And before we leave the statistic illusion area, a
6 couple of things I'd like to talk to you about.

7 Let's start with your confidence intervals you ended
8 with. You manufactured these, didn't you?

9 **A** When you say "manufactured," what do you mean by that?

10 **Q** I mean, you made this slide, didn't you?

11 **A** Yeah.

12 **Q** And you're the one who dispersed these dots and
13 circles in a nonrandom pattern, aren't you?

14 **A** I did.

15 **Q** You specifically, yourself, took random out of this
16 equation at the very start, didn't you?

17 **A** To be clear, this is illustrating why the method that
18 Dr. McCann used has problems.

19 **Q** With due respect, sir, please focus on my questions.
20 We're going to get to his method in a moment.

21 This is your creature though, isn't it?

22 **A** I did create this example.

23 **Q** Yes. And you're the one who divided the slices up so
24 unequally, aren't you?

25 **A** Yes, I did.

1 **Q** Because you could even take your island, as you've
2 done it, and what do we need, we need five in each one? So
3 we could go and do an island there, we could go and do an
4 island there, we could go and do an island there, and we
5 could go and do an island there, couldn't we?

6 **A** So you have to understand that statistics is the -- is
7 in the business of making conservative assumptions. If you
8 end up picking an example where you divide the regions where
9 all the circles and dots are equally divided, you're the
10 one, sir, who is actually making the illusion because we
11 don't know things are going to divide up so evenly.

12 **Q** Well, we don't know things are going to divide up so
13 unevenly either, where you have a line drawn here and you
14 have three little pieces and you have a big chunk where you
15 isolated all.

16 **A** But the right way to respond -- the right way to
17 analyze the data is --

18 **Q** You've got to wait till I finish the question.

19 THE COURT: Hold it. Let's have a question
20 and an answer.

21 **Q** You've got to wait until I finish the question.

22 **A** My apologies.

23 **Q** That's okay. This is not speed chess. You can't
24 pre-move, all right?

25 You have to -- you are the one who selected three

1 small chunks, one big chunk, and you drew the lines where
2 you would set up the result, didn't you?

3 **A** I did, as an illustration.

4 **Q** As an illustration, you have used what is classically
5 called post hoc analysis, haven't you?

6 **A** I don't -- I mean, in my world that's not post hoc
7 analysis, so I'm not comfortable attaching that name to it.

8 **Q** All right. Well, we'll stay in your world.

9 Your pieces don't all turn out to be the same size, do
10 they?

11 **A** They sure don't, no.

12 **Q** And your pieces were hand selected by you to get your
13 result, weren't they?

14 **A** They absolutely were as an illustration for what can
15 go wrong.

16 **Q** And if you go back and you look at what Dr. McCann did
17 and the funneling process, you understand Dr. McCann did not
18 choose any of those prescriptions that were needed to run
19 the red flags?

20 MS. FUMERTON: Objection, Your Honor. This
21 was not in his report, and he wasn't --

22 THE COURT: Overruled.

23 **A** I've never seen this before.

24 **Q** This is his testimony in this case.

25 MR. DELINSKY: Objection, Your Honor.

1 MR. LANIER: No, this is -- I'll fix it, Your
2 Honor.

3 MS. FUMERTON: Your Honor, can we go on the
4 headsets?

5 THE COURT: Let's go on the headphones for a
6 minute.

7 (At side bar at 11:29 a.m.)

8 THE COURT: You can make this point but not
9 the way you're making it. Okay? You can bring that, you
10 know, McCann didn't preselect the 2,000 or the 4,000,
11 whatever it was. Okay?

12 MR. LANIER: Got it. Thank you, Judge.

13 MS. FUMERTON: Your Honor, we object to the
14 chart being shown.

15 THE COURT: All right, fine, but he can make
16 the point otherwise.

17 (In open court at 11:30 a.m.)

18 BY MR. LANIER:

19 **Q** You understand Dr. McCann did not pick, hand pick
20 these prescriptions. They were randomly generated.

21 Do you understand that?

22 **A** The years were not randomly generated. The years are
23 what they are. The division was by years.

24 **Q** Right.

25 **A** So he ended up taking the original data set of

1 prescriptions, and they were divided by years. And no one
2 had any control over how many prescriptions were in each of
3 those years.

4 **Q** That's exactly right. It was not hand picked.

5 And in terms of the years itself, do you think that
6 that was Dr. McCann or the Court that made that decision?

7 **A** I don't know who made that decision, but the formulas
8 are not consistent with that process of first dividing by
9 years and then drawing random samples from them.

10 Those formulas are not appropriate. As a statistician
11 I would say that those are not the right formulas to use to
12 extrapolate back to the population. There are formulas that
13 exist, but he didn't use them.

14 **Q** Well, let's just say -- well, you're assuming that was
15 his responsibility. You're putting it at his feet.

16 **A** Well, in his second report he wrote out the confidence
17 interval formulas, and they don't apply to the data as it's
18 sampled.

19 **Q** So you say. And your illustration is one where you
20 don't divide it even evenly, do you?

21 **A** There's a very basic idea in statistical sampling
22 called --

23 **Q** Answer my question.

24 MS. FUMERTON: Your Honor, let him --

25 THE COURT: Hold it.

1 You can answer Mr. Lanier's question.

2 **A** Could you repeat your question, please?

3 **Q** Yes, sir. You did not divide your sections equally in
4 your illustration, did you?

5 **A** In my illustration I didn't because I don't think that
6 would have made the point where things could go wrong.

7 **Q** Dosage units, you weren't quite there with the jury on
8 that, were you?

9 **A** Could you be more specific?

10 **Q** Yes, sir. I'm showing you Plaintiffs' Demo 123. I'm
11 sure you've seen this before because you looked at
12 Dr. McCann's charts, right, and his report?

13 **A** This looks vaguely familiar, but I don't remember when
14 I last looked at it.

15 **Q** This is time: 2008 to 2018.

16 Do you see that 10-year period, 11-year period?

17 **A** Yes.

18 **Q** This is putting up those opiates.

19 Do you see that as well?

20 **A** Which data set is this from?

21 **Q** This is the data set that he looked at that came from
22 OARRS. In other words, this is dispensing data. This is
23 how much they actually dispensed. You got it?

24 **A** Okay.

25 **Q** And if you look at the total dosage units instead of

1 the MMEs you've used, you will see that Walmart, 6.8 percent
2 with 16 million-plus dosage units.

3 Do you see that?

4 **A** I do see that number, yes.

5 **Q** And some years it was higher. You've got 2014 they're
6 at 7.3 percent; 2015, 7.8; 2017, 9.8.

7 Those are statistics you didn't show to the jury,
8 aren't they?

9 MS. FUMERTON: Your Honor, objection.

10 Could we be heard on the headset, please?

11 THE COURT: Overruled.

12 MS. FUMERTON: Well, Your Honor, this chart
13 has not been shown before.

14 THE COURT: Overruled.

15 MS. FUMERTON: Could I please be heard?

16 THE COURT: Overruled.

17 BY MR. LANIER:

18 **Q** Another issue, sir, while we're on this stop. You
19 told the jury, "Most patients are acute pain less than six
20 weeks in a given year."

21 Do you see that?

22 **A** Yes, I do.

23 **Q** You didn't look and put up here the statistics of the
24 flagged prescriptions to see how many of those were acute or
25 chronic, did you?

1 **A** In this pie chart I didn't, but the table it contains
2 has the answer, right.

3 **Q** Right. So the visual you gave the jury makes it look
4 like the majority of Walmart patients were dispensed opioids
5 for acute pain. But you did have the data of chronic pain,
6 didn't you?

7 **A** Yeah. I wasn't hiding it. It was on the table.

8 **Q** Patients with flagged prescriptions, acute drops down
9 to 50 percent, doesn't it?

10 **A** Yes, it does.

11 **Q** And supply days, over 42 supply days, that's half of
12 the patients being dispensed from Walmart, true?

13 **A** It's one minus the percent of -- 100 percent minus the
14 percent that were acute patients.

15 **Q** That would redraw that chart almost in half, wouldn't
16 it?

17 **A** If we were to produce a pie chart for that row of the
18 table, that's what it would look like, yes.

19 **Q** All right. Let's go to the last stop, please, on the
20 road. And this stop I've called reality. And this is where
21 I'd like to look at some of your slides.

22 Let's start with your idea of 25 miles to the
23 Cleveland Clinic.

24 Remember that testimony?

25 **A** I do, yes.

1 **Q** Now, you offered a slide where you showed the
2 prescriber postal code in the Cleveland Clinic area. True?

3 **A** I did not show this today, no.

4 **Q** Okay. And we're -- but you prepared this slide,
5 didn't you?

6 **A** I did, yes.

7 **Q** By the way, you understand the Cleveland Clinic
8 actually has facilities in a number of different places?

9 **A** I'm not specifically aware of that, but I can believe
10 that, yes.

11 **Q** Including in some of the county locations we've talked
12 about?

13 **A** Right, but the flag is actually based on ZIP codes.
14 So wherever the Cleveland Clinic itself, specific clinic,
15 would be indicated by the ZIP code.

16 **Q** Well, I believe, I could be wrong, but I believe the
17 Cleveland Clinic within Cleveland, that campus may have its
18 own ZIP code. Did you know that?

19 **A** I believe that's correct, yes.

20 **Q** But within the framework of that, sir, you didn't
21 check the other Cleveland Clinics, did you?

22 **A** The analysis that I did wasn't specific to the
23 Cleveland Clinic. I was making an argument for how things
24 could be a problem if you happen to live outside the 25-mile
25 radius of the Cleveland Clinic --

1 **Q** But look at the statistics. There were 1800 hard
2 copies of prescriptions looked at by Mr. Catizone, right?

3 **A** I don't remember that number.

4 **Q** Did you do the math to see that of the red-flagged
5 prescriptions, only 135, or 7.5 percent, were written at the
6 Cleveland Clinic?

7 Did you know that?

8 **A** I didn't perform these computations, and I'm not aware
9 if these numbers are correct.

10 **Q** And if you further then, I'm assuming, did not perform
11 the computation for the jury of how many of those would be
12 flagged for distance of over 25 miles, you're down to 26
13 prescriptions out of 1800, or 1.4 percent, are even in play.

14 Did you know that?

15 MS. FUMERTON: Objection, Your Honor.

16 THE COURT: Overruled.

17 **A** I didn't perform these computations, so I can't verify
18 what you're saying is correct.

19 **Q** But before you come in here and criticize Mr. Catizone
20 for his red flags -- and by the way, I'm a big Cleveland
21 Clinic fan. I think everybody in the community is. But
22 understand, sir, that that doesn't mean that they're
23 absolutely perfect. Fair?

24 **A** No clinic is.

25 **Q** And it never hurts for anyone to at least have someone

1 eyeball it, and they'll probably say, Cleveland Clinic, make
2 a note, it's okay. But it doesn't hurt to eyeball it just
3 in case, does it?

4 **A** Much in the way that Dr. McCann should have been
5 eyeballing the results in his analysis, right?

6 **Q** I'm sorry, sir, you're taking a potshot at Dr. McCann
7 instead of answering my question.

8 MS. FUMERTON: Objection.

9 THE COURT: Overruled.

10 **Q** Answer my question.

11 **A** No, I'm not taking a potshot. I'm just making the
12 argument that if somebody is claiming to not be doing some
13 analyses that wasn't in the scope of their work, you know, I
14 would say the same thing for Dr. McCann.

15 **Q** Can you now answer my question --

16 **A** Sure. Ask it again please.

17 **Q** -- and then I'll rise to Dr. McCann's defense. First
18 answer my question.

19 It doesn't hurt to eyeball the prescription just in
20 case, does it?

21 **A** It doesn't hurt to eyeball the prescription?

22 **Q** Yeah. If a prescription is flagged, it doesn't hurt
23 to look at it just to make sure, ah, that's Cleveland
24 Clinic, okay, I understand. Doesn't hurt to do that, does
25 it?

1 **A** Depends what analysis you're performing.

2 **Q** Well, I'm sure that someone could go into the
3 Cleveland Clinic back 15 years ago before people were
4 more -- as careful as they are now and electronic as they
5 are now, and grab a prescription pad.

6 It never hurts to check to make sure a prescription's
7 valid, does it?

8 **A** Again, this is outside the scope of the kinds of
9 analysis that I would be doing.

10 **Q** All right.

11 **A** So I can't really opine on that.

12 **Q** Did you do the analysis to see the top five doctors
13 that were flagged by the 25 miles?

14 **A** No, I did not.

15 **Q** If you had done the analysis to -- I'm showing Demo
16 121.

17 If you had done the analysis to look at Walmart's
18 dispensing data for the top 5 that triggered flag 2, you'd
19 have seen these doctors. The jury's heard about
20 Dr. Demangone. Bruce Piszal, 662 prescriptions flagged flag
21 2.

22 Do you know who Dr. Piszal is?

23 **A** I don't, no.

24 **Q** I say Dr. Piszal, I don't think that's right anymore.
25 He surrendered his license over this. Do you know that?

1 **A** I didn't.

2 MS. FUMERTON: Objection.

3 THE COURT: Sustained. Sustained.

4 **Q** You don't know about these other doctors either,
5 Dr. Moufawad, for example?

6 **A** I don't, no.

7 MS. FUMERTON: Objection to the entire exhibit
8 when there's no facts in evidence on this.

9 THE COURT: Mr. Lanier, the witness said he
10 doesn't know any of the doctors.

11 MR. LANIER: All right. I'll move on, Judge.

12 **Q** Next, you put a slide up that quoted the DEA's
13 testimony from Mr. Wright that said 80/20 is a ratio that's
14 looked at, right?

15 **A** Yes, I did.

16 **Q** I want you to assume with me that the jury has heard
17 testimony from Joe Rannazzisi on this point, okay?

18 **A** Okay.

19 **Q** And I want you to assume with me that Joe Rannazzisi
20 said that the 80/20 percentages, quote, was not the end-all.
21 You could have a pharmacy that has a smaller percentage of
22 opioid, a larger percentage of opioid to noncontrolled drug
23 purchases or dispensing, and that pharmacy might be fine.
24 But you could also have a pharmacy that has a very small
25 percentage, 12 percent, but when you look at their opioids,

1 every opiate going out the door is an oxycodone 30 milligram
2 tablet. He said that doesn't make any sense.

3 You didn't take into account that concept when you
4 spoke to the jury of the 80/20 rule, fair?

5 **A** I did not. I was using the information that was given
6 by Kyle Wright's testimony. And had I had others, I could
7 have compared it to those numbers.

8 **Q** Well, if you will assume with me that Joe Rannazzisi
9 was running the Diversion unit for the DEA at one point in
10 his career and that he said that while this is an indicator,
11 it's not necessarily the end-all and, quote, "You can't say,
12 well, if it's less than 20 we don't have to worry about it,
13 because that's not how the system should be set up."

14 If you take that testimony from a DEA man into
15 account, kind of changes your slides on that in the real
16 world, doesn't it?

17 MS. FUMERTON: Objection, Your Honor.

18 **A** It doesn't change my slides in the sense that I was
19 doing --

20 THE COURT: Overruled. You can answer.

21 **A** It doesn't change my slides in the sense that I was
22 performing a computation to compare the controlled substance
23 rate at these Walmart pharmacies to a stated guideline, and
24 I wasn't making any judgments on that.

25 **Q** But you never gave the jury a good readout of how much

1 hydrocodone the Walmart stores were selling, did you?

2 MS. FUMERTON: Objection.

3 THE COURT: Sustained.

4 **Q** Sir, did you -- I'm handing you Demonstrative Exhibit
5 87.

6 Do you have that in front of you?

7 **A** Yes, I do now, yeah.

8 **Q** And it is for the years 2006 to 2018, the Walmart
9 dispensing data-total dosage units of hydrocodone dispensed.

10 Do you see that?

11 **A** Yes, I see this chart you gave me.

12 **Q** You've got over 8 1/2 million units during that time
13 period.

14 Do you see that?

15 MS. FUMERTON: Objection. Foundation.

16 THE COURT: Overruled.

17 **A** I see the number. What's your question?

18 **Q** Did you take that into account at all in the figures
19 you gave this jury about how much drug was being sold by
20 these companies -- or by Walmart stores?

21 **A** I have dosage units reported in my tables for
22 2006-2014.

23 **Q** You stopped at '14?

24 MS. FUMERTON: Objection.

25 **Q** Is that what I'm hearing?

1 **A** For -- based on the CT III Walmart -- oh, the
2 dispensing data, I'm sorry. Okay.

3 **Q** Did you even use the dispensing data?

4 **A** Yeah, of course I used the dispensing data.

5 **Q** And did you stop at 2014?

6 **A** No, for the dispensing data I stopped at 2018 for all
7 the analyses that you saw.

8 **Q** And did you isolate out hydrocodone for the jury?

9 **A** I don't recall off the top of my head if one of my
10 slides went through hydrocodone.

11 **Q** Instead you put slides like slide 19 up in front of
12 the jury. This was your slide, correct?

13 **A** Yes.

14 **Q** Let me back it out so you can read my notes, because
15 these are my questions.

16 You've ignored dosage units here, haven't you?

17 **A** Ignored dosage units? This is a table that summarizes
18 prescriptions, not dosage units, not MMEs.

19 **Q** In other words, you've ignored dosage units, haven't
20 you?

21 **A** I didn't ignore them. I just simply didn't present
22 them.

23 **Q** Well, you know that a prescription for 30 pills is
24 different than a prescription for 120 pills, don't you?

25 **A** Sure.

1 **Q** Which is different than a prescription larger than
2 that or smaller than that.

3 Prescriptions aren't going to tell you how many pills
4 per person were put out, are they?

5 **A** Yeah, and that's not what this table claims to
6 purport. So it's not trying to hide anything. It's just
7 telling you if you want to be thinking in terms of
8 prescriptions and prescriptions per capita, that's what this
9 table is showing.

10 **Q** But you don't break out pills per capita to see how
11 many pills are out there, do you?

12 **A** In this analysis I do not.

13 **Q** And did you see that analysis that's been done by
14 others in this case?

15 MS. FUMERTON: Objection.

16 THE COURT: Yeah, sustained.

17 **Q** Okay. Have you seen that analysis -- well, let me ask
18 it this way.

19 Did you perform that analysis?

20 **A** Did I perform which analysis?

21 **Q** How many pills per person in these counties were put
22 out by Walmart during the years that you had the dispensing
23 data?

24 MS. FUMERTON: Objection.

25 THE COURT: Overruled.

1 **A** I did not.

2 **Q** Now, a lot of your charts that you put up were charts
3 that were based on MME.

4 Remember that?

5 **A** I do, yes.

6 **Q** You selected MME in these charts, didn't you?

7 **A** That's correct, yes.

8 **Q** Now, the jury was shown and heard testimony yesterday
9 from Mr. Choi, who is -- Dr. Choi, I guess, maybe's a
10 doctor, who's an economist.

11 Did you read his report?

12 **A** No, I did not.

13 **Q** I want you to assume with me that he said that the
14 median total, and that's median, not mean, the median total
15 for MME per prescription by pharmacy in these counties,
16 taking into account that time span, puts Walmart down here
17 in the lower MME range.

18 Do you see that?

19 **A** Okay, yeah.

20 **Q** And the low MME range, you know that's where you're
21 going to find drugs like hydrocodone and oxycodone, right?

22 **A** Okay.

23 **Q** The fentanyl popsicles, they're going to be up at the
24 high range, aren't they?

25 MS. FUMERTON: Objection.

1 THE COURT: I'm going to sustain it. If you
2 want to ask the witness if he knows anything about this, you
3 can. If he does, fine. If he doesn't --

4 MR. LANIER: Judge, I'll move on.

5 THE COURT: Okay.

6 MR. LANIER: I'll move on.

7 Q This same thing you've done over and over, you have
8 used MMEs instead of dosage units, haven't you?

9 A I have, yes.

10 Q All right. So with that reality picture, we're at the
11 end of the road.

12 MR. LANIER: Your Honor, I'll pass the
13 witness.

14 THE COURT: Okay. I think this is what we'll
15 do. Ladies and gentlemen, if you want to pass any questions
16 that you might have for this witness to Mr. Pitts. And I
17 think in honor of the birthday we'll give you a little
18 longer lunch, we'll look at the questions, and we'll pick up
19 with further testimony of this witness at 1:00.

20 So have a good lunch.

21 (The jury is not present.)

22 (Juror question review.)

23 (A luncheon recess was taken at 11:50 a.m.)

24

25

1 A F T E R N O O N S E S S I O N

2 - - - - -

3 (In open court at 1:11 p.m.)

4 THE COURT: The plaintiffs have proposed an
5 instruction. I'm not inclined to give it. If I give an
6 instruction, I can't just tell the jury what they can't
7 consider the statements for. I have to tell them what they
8 can consider it for, like I've done in what we have in the
9 proposed final instructions on settlements.

10 So I have to come up with language for that. And I'm
11 not exactly sure what I would say, and I think it draws more
12 attention to the statements and may be confusing.

13 So unless the parties agree on something, like they
14 have on settlements, I'm not inclined to give anything.

15 MR. MAJORAS: Thank you, Your Honor.

16 MR. WEINBERGER: Your Honor --

17 THE COURT: This doesn't come out on the
18 realtime.

19 MR. WEINBERGER: I think you got it now.

20 THE COURT: All right. Go ahead,
21 Mr. Weinberger.

22 MR. WEINBERGER: So when we went through our
23 issues with the Mack testimony, you said to suggest a
24 limiting instruction, which is what I came up with.

25 THE COURT: I understand. But I'm not just --

1 I'm not going to say you can't consider it for the truth of
2 the matter. I've got to say what you can consider it for.

3 MR. WEINBERGER: I understand that, Your
4 Honor. But I don't think that it's fair to the plaintiff
5 that we have to submit something that the defendants are
6 going to agree to or else you're not going to give a
7 limiting instruction at all.

8 THE COURT: Well, I didn't quite say that, but
9 you've got to suggest to me what they can take it for. I'm
10 not going to -- I mean, akin to the instruction that we have
11 on settlements. It says it's in for a limited purpose, and
12 it says what the limited purpose is.

13 MR. WEINBERGER: I'll try to come up with
14 something. That's part of the problem that I have. I can't
15 fathom what they should consider hearsay for.

16 MR. MAJORAS: Your Honor, John Majoras.

17 Just for the record, we object to a limiting
18 instruction at all on this witness. I think it unfairly
19 points to her testimony as though it's somehow less
20 trustworthy or should be treated differently than others.

21 The Court need not and does not explain its rationale
22 for its evidentiary rulings. It should not be doing that
23 now. It's not Evidence 101 for the jury.

24 And then finally, if the Court, and you may already
25 have this in your final instructions, if the Court has a

1 general instruction of the jury should not try to -- should
2 not take my rulings one way or the other on evidentiary
3 issues and should only pay attention to the evidence that's
4 been submitted and to not pay attention to those you're
5 specifically instructed, that's all there should be.

6 This opens up the Court to, you know, questions on a
7 regular basis, "Why are you ruling this way." That's not
8 really the jury's province.

9 And of course, in this --

10 THE COURT: I would not limit it just to
11 Ms. Mack, of course it goes to other witnesses. And if I
12 give a limiting instruction, Mr. Weinberger, I have to
13 instruct the jury what is the limited purpose for which they
14 may consider the testimony --

15 MR. MAJORAS: Your Honor -- I'm sorry.

16 THE COURT: -- which is the purpose of a
17 limiting instruction, Mr. Majoras. It's not -- if the Court
18 allows evidence for a limited purpose, it is appropriate and
19 I think essential for the Judge to say, all right, you can't
20 consider it for this purpose but you may consider it for
21 this purpose. That's the whole point.

22 MR. MAJORAS: I understand, sir.

23 THE COURT: Like we did for settlements.

24 So the question is whether I should give one. And if
25 I give one, I'm going to have to tell them what they may

1 consider it for.

2 MR. MAJORAS: The issue here, sir, is it's not
3 hearsay, as you've ruled, because it's not being offered for
4 the truth of the matter asserted.

5 THE COURT: That's the point. If the
6 non-hearsay -- it is hearsay if she relates, you know, what
7 someone said, an out-of-court statement by someone else is
8 hearsay.

9 Now, the witness can testify that I had that -- I had
10 a conversation with someone, identify it, and as a result of
11 that conversation I did something or I didn't do something.
12 And that's the non-hearsay -- that's the non-hearsay use of
13 the statement. It goes to knowledge, intent, state of mind
14 of the defendant. Okay?

15 MR. MAJORAS: I agree, Your Honor, which has
16 been the case with other --

17 THE COURT: Which is what we say about the
18 settlement agreements.

19 MR. MAJORAS: Which is and part of my issue,
20 Your Honor, is if there should be a discussion about what
21 hearsay may or may not be, it should be at the end of the
22 case, if at all, because these hearsay rulings have applied
23 to virtually every witness in the case.

24 THE COURT: Well, I'd like the parties to
25 consider, maybe the logical thing is to put it in, if I do

1 it, I'll put it in the final instruction as part of that.

2 All right?

3 MR. WEINBERGER: Your Honor, this is a
4 critical issue in this case, and to --

5 THE COURT: We've already had testimony --

6 MR. WEINBERGER: And to lose it, you know,
7 within the Court's general instructions just does not --

8 THE COURT: Mr. Weinberger, I'm not going to
9 give this instruction.

10 MR. WEINBERGER: I have a different proposal.

11 THE COURT: All right. What's your proposal?

12 MR. WEINBERGER: "This testimony is not to be
13 considered for the truth of what was said to Ms. Mack. It
14 is only to be considered as her reason for taking certain
15 action without regard to its truth."

16 MR. MAJORAS: That's well beyond the ruling of
17 the Court. It specifically does what I'm concerned about,
18 is singling out a particular witness.

19 THE COURT: If I would say anything, it's you
20 may consider if for the fact that it was said to her. But
21 the problem is that sounds like the truth of it --

22 MR. WEINBERGER: Right.

23 THE COURT: -- as well. So that's why -- at
24 the moment I'm not going to say anything.

25 MR. MAJORAS: And, Your Honor, if there's a

1 proposal in terms of the final instructions about
2 evidentiary rulings, we're of course happy to look at it.
3 That would at least address my concern that it seems
4 directed to a particular witness.

5 THE COURT: Well, right. And it would go
6 beyond this witness because we've had testimony with other
7 ones, and that's the other thing. I'm not going to direct
8 it to this witness without the others. It doesn't make
9 sense.

10 So the parties can -- and I'm going to think about
11 adding something to the instruction that's now on -- it's on
12 page 22, settlement agreements, because that says what -- it
13 says the evidence has been admitted for a limited purpose.

14 So it seems to me that's the place to put it, because
15 it came in with more than one witness.

16 MR. WEINBERGER: We'll craft something, Your
17 Honor.

18 THE COURT: And show it to the defendants. To
19 me, that's the logical place.

20 MR. MAJORAS: We will work with the
21 plaintiffs, Your Honor, on language to see what's
22 appropriate.

23 With that, Your Honor, I'm going to take my leave.
24 Thank you.

25 THE COURT: All right. I hope everything

1 goes -- I know it will go well. You have our
2 congratulations.

3 MR. MAJORAS: Thank you, Your Honor.

4 THE COURT: Okay. We can bring the jury in
5 then.

6 (The jury is present at 1:20 p.m.)

7 THE COURT: Okay. Please be seated.

8 Dr. Glickman, you're still under oath from this
9 morning.

10 And Ms. Fumerton, you may continue, please.

11 MS. FUMERTON: Thank you, Your Honor.

12 And I guess good afternoon now, Dr. Glickman.

13 - - - - -

14 REDIRECT EXAMINATION

15 BY MS. FUMERTON:

16 **Q** So the jury has the opportunity to ask certain
17 questions, and so I'm going to display those now for you to
18 answer. And what I would ask, though, is that you, again,
19 answer them to sort of the best of your ability within your
20 expertise. And if it's outside of your expertise, it's
21 perfectly okay to say it's not part of your expertise. Or
22 especially if it is part of your expertise but it's just
23 something you didn't analyze and would need more data,
24 that's fine to answer too.

25 **A** Okay.

1 **Q** This last one last, can you read that okay?

2 **A** Should I try reading it out loud?

3 **Q** No. I'll try to read it, and then you can answer.

4 "Example: If you look at three years of data, three
5 people overdose one year; second year, four overdose, and
6 then there's five overdoses in year three, the total, 12
7 overdoses" -- or "that totals 12 overdoses" -- following so
8 far? "The means number would be 4, correct?"

9 **A** Yeah. So it looks like if you're averaging three and
10 four and five in these three consecutive years, then it
11 would be an average of four per year. So I believe that's
12 correct.

13 **Q** Okay. And then the last statement was, "That hides
14 the fact that 12 people overdosed is hidden."

15 Do you agree with that statement?

16 **A** I'm not sure I agree with that, because if you know
17 that there are four -- if there are four per year and it's
18 over three years, then you can determine that three times
19 four is 12.

20 Now, you don't exactly know how -- you know, if you
21 just knew that it was four per year, you don't know how
22 those 12 distribute across the three years. Like, you don't
23 know it's three, four, five, or you don't know it's four,
24 four, four. But the average of four tells you at least that
25 on average across those three years it's four per year.

1 **Q** And I just want to tie this back to your testimony
2 today.

3 I don't remember seeing any means or averages within
4 what you testified today. Is that correct?

5 **A** Yeah. I have to say I'm not exactly sure what that's
6 connecting to. If we had a little bit more reference for
7 that question, I might be able to address that more
8 specifically.

9 **Q** And unfortunately, we don't get to ask the jury sort
10 of follow-up questions with that, so we do the best we can.

11 But you also didn't talk about any deaths anywhere in
12 any of your --

13 **A** I'm sorry?

14 **Q** Any deaths?

15 **A** Any deaths, no, I certainly didn't refer to deaths in
16 particular, no.

17 **Q** Next question. "You did not generate or review the
18 exact prescriptions that Dr. McCann or Mr. Catizone
19 reviewed?"

20 Is that accurate?

21 **A** The way I'm understanding the question, "Did not
22 generate or review the exact prescriptions..."

23 Oh, from ...

24 **Q** Maybe I can help out with this question --

25 **A** Yeah, I'm not sure I understand.

1 **Q** -- because I think I understand what the juror is
2 asking.

3 Did you review the same data set that Dr. McCann did?

4 **A** Yeah. I mean, I analyzed the same data set as what
5 Dr. McCann used. I mean, in terms of -- I mean, the
6 generating question I guess is more related to the
7 generating the sample of 1800. That's what -- I guess, like
8 the only time I think I used the word "generate" was in
9 relation to the sample of 1800.

10 **Q** But the sample of the 1800, if that's what the
11 question is going to, was the same 1800 that Dr. McCann
12 reviewed and Mr. Catizone reviewed, correct?

13 **A** Yeah, that's my understanding; that once they
14 generated the 1800 prescriptions, which were a sample from
15 the total of 49,243, that Dr. McCann flagged, I think at
16 that point those 1800 were then reviewed by plaintiff. I'm
17 not exactly sure who reviewed them, but yes.

18 **Q** And just as a follow-up question on that, are the five
19 Walmart stores that you analyzed the same five that
20 Dr. McCann was analyzing?

21 **A** Yes, they were.

22 **Q** And did Dr. McCann analyze any other pharmacies
23 outside of Lake and Trumbull County, Walmart or otherwise?
24 Mr. Lanier was asking you questions about stores in
25 Pennsylvania.

1 **A** Not that I'm aware of.

2 **Q** And in fact, when we were talking about the market
3 share numbers earlier, we walked through that we were -- you
4 were actually using the charts prepared by Dr. McCann to
5 come up with the numbers; is that fair?

6 **A** I was, yes.

7 **Q** Okay. Several parts to this question, so we're going
8 to try to walk through this together. And I tried to pull
9 the charts.

10 **A** Okay.

11 **Q** It says, "85,087 was the total number of oxycodone
12 dispensed by Walmart between 2006 and/or 2018?"

13 And so I think what the juror was asking was about
14 this chart that we showed. And I actually wrote on this
15 one, so I'm showing the exact same one that's not marked up.
16 Maybe you folks can see it a little bit better.

17 So this is 1536, and that's the same one that's here.
18 So I'm just going to use this one so we can focus on it for
19 the juror question.

20 **A** Okay.

21 **Q** Okay. So if we could keep the juror question on here
22 too.

23 So it looks like the number that the juror is asking
24 about is this one right here.

25 **A** Okay.

1 **Q** And so can you just explain what that number is?

2 **A** Yeah. That's the total number of prescriptions of
3 oxycodone in Lake and Trumbull County between 2006 and the
4 end of March of 2018.

5 **Q** And that's for Walmart?

6 **A** That's for Walmart specifically, yes.

7 **Q** So next question.

8 MR. LANIER: Can you move the question?

9 MS. FUMERTON: Yeah, thank you. I'm trying
10 to --

11 THE WITNESS: If you can move it to the left a
12 little bit.

13 **Q** Here. We'll do this. Just trying to let you see the
14 question and the chart at the same time.

15 Okay. So the second question was, "How many pills, on
16 average, is in a prescription?"

17 **A** Yeah, that's something I don't know the answer to.
18 That, I can't answer.

19 **Q** And I think this reference 01536 is just that we're
20 all looking at the same chart.

21 All right. "So if seven pills were in 85,087
22 prescriptions, that equals what?"

23 **A** Are we asking what's the fraction of 7 -- oh, I see.
24 So if there were --

25 **Q** I'm going to put all three of these because perhaps

1 that will help. And I think this is just about this number,
2 so I'm going to cover this up for a second.

3 So the rest of the --

4 **A** Oh, I see. So if there were seven pills per
5 prescription, that's how I'm understanding it, so --

6 **Q** I think that's right.

7 So if you're saying "If there's 85,087 prescriptions,
8 that equals how many pills," is how I'm reading it.

9 **A** So, I mean, to answer -- thank you.

10 To answer the question, it would be the multiplication
11 of 85,087 times 7. So that number, just using my fancy
12 phone calculator, is going to --

13 I'm allowed to do this, right? I guess the answer is
14 yes.

15 85,087 times 7, that gives me a total of 595,609
16 pills.

17 **Q** And of course, we don't know what the answer is to how
18 many pills are per prescription. It could be three in a
19 prescription or --

20 **A** Yeah, I'm understanding this question as hypothetical.

21 **Q** Okay. And then divide that number, which what was the
22 number that we just said?

23 **A** By the total number of people in both counties.

24 **Q** Right, both counties. And I don't know if that number
25 is here on this chart or if you would need --

1 **A** No, it is. It's that 439,668.

2 **Q** Got it.

3 **A** So if I divide the 595,609 divided by 439,668, so that
4 gives me the number 1.355.

5 **Q** I'm sorry, 1.355?

6 **A** Yeah, 1.355.

7 **Q** Okay. And then the next question is, "What is the
8 actual percentage of pills filled by Walmart in Lake and
9 Trumbull County as a percentage?" And there's a comment,
10 "If this is the right formula, please compare that total
11 percentage to the totals on the exhibit."

12 So I think you could -- let me ask this in two ways.
13 You could finish this hypothetical, right, and you could
14 come up with a percentage?

15 **A** Right.

16 **Q** Do you know what -- but you would need more
17 information that's on that chart; is that right?

18 **A** So, could you -- can we look at the question one more
19 time? I'll have one more comment about this in a moment,
20 but what is the actual percent pills filled by Walmart, the
21 actual percentage of pills --

22 **Q** And so --

23 **A** I'm not sure I have that information here.

24 **Q** Yeah, I don't know if that's -- but I did want to
25 point out because I think this information might be on this

1 chart.

2 So tell me, it's slightly different, but this is
3 something that you looked at -- or we looked at earlier, and
4 this is MDL 01541A. And we looked at it just in the
5 presentation, but it's the same that we looked at before.

6 I think the question is about pills. So can you tell
7 anything about what the percentage of Walmart pills were
8 dispensed in this county based on this chart?

9 **A** Yeah. So the dosage units are basically counting the
10 pills because an individual dosage unit is typically an
11 individual pill, but it could be other things.

12 So as a rough approximation, if you take the total
13 Walmart dosage units, which looks like it's 10,380,575, you
14 can in theory take that number, divide it by the population
15 total, which was on the other chart, and then get a number.

16 **Q** And that would give you a per population or per
17 individual number. But if you were looking to what the
18 percentage of pills filled by Walmart in Lake and Trumbull
19 County is, we were talking earlier about this 3.15 percent
20 number, which is the percentage of Walmart's share of the
21 opioids by MME.

22 **A** Right.

23 **Q** What is on your chart --

24 **A** Right, so the percentage of the shared -- the
25 percentage share of dosage units is the 4.71 percent.

1 **Q** So that information is contained on your chart as
2 well?

3 **A** That is on my chart, that's right.

4 And in that case, you don't have to make the
5 assumption that there are seven pills or any specific number
6 of pills per -- you know, per prescription.

7 **Q** And I just want to look at the source here. The
8 source is the expert report of Craig McCann, Ph.D., with
9 backup materials.

10 And so again, these are the numbers that Dr. McCann's
11 using, right?

12 **A** That's correct.

13 **Q** Okay. "Question. As error rates can go both ways,
14 Bayesian statistics" -- I'm very impressed with this
15 question, by the way.

16 **A** There's a secret statistician somewhere on the jury.

17 **Q** -- identifies false positives and false negatives
18 (also true positives, true negatives). After review of the
19 data, what percentage of the false negatives were there
20 based on the McCann/Catizone red flag criteria? Meaning,
21 how many prescriptions weren't flagged that should have been
22 flagged based on their criteria? If you don't have an exact
23 number, can you estimate it?"

24 **A** Yeah, I'm afraid this is something that I would need
25 to really set aside some time to actually do a little bit of

1 the computation. I mean, we'd have to first of all figure
2 out how to even figure out the false positives and false
3 negatives. That's not even very clear.

4 So the simple answer is that there's no way on the fly
5 I can possibly estimate that.

6 Q And so I just want to clarify that too, because here
7 is just one example, and I don't know if this is what was --
8 we looked at several different examples where you did some
9 computations based off of various red flags. This was one
10 of them; is that right?

11 A Yeah, that's correct.

12 Q And again, you don't know whether methadone is a
13 short-acting a long-acting?

14 A Well, you told me it is; but yes, before that, yeah.

15 Q Other than what I have represented.

16 But if you were -- this is just simply doing the
17 math -- calculating that if you did not intend to include
18 methadone or shouldn't have included methadone as flag 9,
19 this over-flags by approximately 58 percent; is that fair?

20 A Well, I'd say 58 percent were flagged for inclusion of
21 methadone, so 58 percent --

22 Q And you're not saying one way or the other whether
23 methadone should have been included?

24 A Yeah, I'm just doing the calculation.

25 Q So if somebody else concludes that methadone shouldn't

1 have been included, would this be an example of improperly
2 applying red flag 9?

3 **A** Under the assumption methadone shouldn't be included,
4 yes. I mean part of the reason the answer is a little
5 complicated from the jury question is that we're just
6 focusing on just one red flag, but there are many red flags
7 and they might overlap.

8 So like when a red flag -- you know, if in like a
9 situation like this, you know, we end up, you know, based on
10 my analysis if, you know, some of these red flags are -- you
11 know, we raise a question that they should be a red flag
12 because they include methadone, and then there's maybe
13 another red flag that also has a similar problem, those
14 might be for the same prescription. So it gets to be a
15 little hard to figure everything out when you're putting
16 everything in aggregate for all the red flags.

17 So it wouldn't be as simple as just taking each
18 individual red flag one at a time, looking at the fraction
19 of flags that seem to not do what they're intending to do
20 and add them up. You can't do it that simply,
21 unfortunately.

22 **Q** Is it something that you could do with enough time if
23 you were asked to do it? Well, I guess -- you know what,
24 strike that question. I'm going to move on to the next one.

25 I think these are related, so I'm going to ask this

1 one, and then I can put up a slide too.

2 "When you reviewed the prescriptions you saw
3 documentation about primary care and you saw patient records
4 that it was acute?"

5 Maybe just another way to phrase this too is, can you
6 explain sort of how you determined whether something was
7 acute or was primary care based on the data you reviewed?

8 **A** Sure. The determination whether the prescriber was
9 primary care was based on the prescriber ID and what their
10 specialty was. So we didn't -- you know, we didn't need to
11 look up any special documentation. It was actually part of
12 the data.

13 Similarly, for whether the patient was acute, which
14 basically is related to the supply of the drug, like how
15 long the prescription lasted, that's also information
16 already in the data. That's part of the prescription.

17 So, you know, we didn't need to look at any extra
18 information beyond what was already in the data.

19 **Q** And so I think this relates to your analysis on
20 Catizone's red flags 10 and 11. And I took this from the
21 presentation, it's WMT-MDL-01585. I have another copy of
22 just that I'm going to put down because it's a little bit
23 clearer. You can see it's the same document for folks to
24 see.

25 There's a second question that I think relates to the

1 same sort of subject matter, which is, "Are you saying that
2 because chronic patients weren't included in Dr. McCann's
3 data for flag (10 and 11, I believe) (4 percent versus 90s)
4 the percentage of red flag prescription was incorrect?"

5 Maybe actually it would be better for me to put --
6 this is the summary chart you created and this is the
7 visualized representation of it, right?

8 And so if I put this here, let me see if I can move
9 this up a little more, maybe you can answer the question
10 that way.

11 **A** So I'm not actually saying correct or incorrect. I'm
12 just simply stating that if you -- you end up accounting for
13 patients that were chronic pain, pain patients seen in
14 primary care, then that number reduces by a lot applying
15 that guideline.

16 So I'm not saying it's correct or incorrect. I'm just
17 simply saying that if you were to account for the CDC
18 guideline, the number of flags would end up reducing. So
19 it's -- you know, I'm not trying to make an evaluation of
20 this.

21 **Q** And so basically you're saying if the CDC guidelines
22 had been applied, there would have only been 4.7 percent of
23 the prescriptions of what was actually flagged, only 4.7 of
24 them would actually still be flagged?

25 **A** That's correct.

1 **Q** And I guess that was for the sample, but it would be
2 2.9 if you were looking at the entirety?

3 **A** Right, that's right.

4 **Q** I'm going to put this up here. It's "How many
5 prescriptions of the 3,587 prescribers are the same and
6 wrote the same prescription to the different patients?"

7 And I think what this is referring to is -- hold on
8 one second -- this particular summary that you prepared,
9 WMT-MDL-01553 that we saw in the presentation. And that's
10 with the 3,587 prescribers.

11 So did you do this analysis?

12 **A** Yes.

13 **Q** And what about the question? Can you answer that?

14 **A** Yeah. So the 3,587 are unique prescribers. They're
15 all different from each other, but -- well, I didn't take a
16 look at whether they wrote prescriptions for the same or
17 different patients. This is just focusing on the
18 prescribers.

19 **Q** Okay. I think this is the last question from a juror,
20 and I believe it relates to this chart that the jury saw,
21 and it could have been about the one about patients.

22 So you had a similar chart about patients with a prior
23 fill at a Walmart store and you had one about prescribers,
24 correct?

25 **A** That's right.

1 **Q** So I'm not sure if this question is relating to the
2 patients or prescribers, but "Is prior fill a red flag
3 resolution to the prescription in hand? What are your" --

4 **A** I'm sorry, I can't see the question.

5 **Q** Sorry. "Is prior fill a red flag resolution to the
6 prescription in hand? What are your credentials to allow
7 you to say yes or no?"

8 **A** Yeah, so I suppose I would answer this question by
9 saying that I don't have any particular credentials to say
10 whether a prior fill is a resolution to this particular red
11 flag. This again is just simply more a computation just to
12 inform you how many of the prescriptions involved a prior --
13 either, you know, prior fill by the same patient or the
14 prior fill prescribed by the same prescriber.

15 So I definitely don't claim that I have the
16 credentials to add meaning to that conclusion.

17 **Q** You're not a pharmacist, you're not talking about the
18 proper way to resolve a red flag, correct?

19 **A** That's correct.

20 **Q** And you're just providing the data so that other
21 people can draw the appropriate conclusions?

22 **A** I'm providing the summary of the data, yup.

23 **Q** Okay. I think that's it for jury questions. And so I
24 have I think just one subject I want to cover on my own.

25 Mr. Lanier showed you this chart, and I believe you

1 testified you've never seen it before or you don't recall
2 seeing it. Is that right?

3 **A** I don't recall seeing this, no.

4 **Q** And Mr. Lanier also represented that it was something
5 that Dr. McCann created.

6 Do you recall that?

7 **A** I recall him saying that, yes.

8 **Q** And I just want to look, this is talking about market
9 share; is that fair? By the title. We don't know what it
10 is.

11 **A** It's summary of margin share by pharmacy, and all the
12 units are dosage units.

13 **Q** So you've never seen this before, you don't know who
14 created this?

15 **A** I don't recall having seen this.

16 **Q** And I just want to put down here, you see where it
17 says "Source: OARRS"?

18 **A** Yes, I do.

19 **Q** Hold on to that thought.

20 **A** Okay.

21 **Q** One of the things that you reviewed for your testimony
22 was the deposition of Dr. McCann, correct?

23 **A** I did, yes.

24 **Q** All right. We can give a copy of this to counsel and
25 the judge.

1 This is a copy of that deposition that you reviewed,
2 right? This is Lake and Trumbull County, deposition of
3 Craig McCann taken June 11, 2021?

4 **A** That's right.

5 **Q** So I want to turn to page 224 of this deposition.

6 And the witness here is Dr. Craig McCann, correct?

7 **A** Yes.

8 **Q** And so the question is: I'm telling you, you could
9 have done a market share analysis for the OARRS data,
10 couldn't you have?

11 There's an objection, and Dr. McCann testified: I
12 don't know. I didn't think about it. I wouldn't use OARRS
13 data. I would use the ARCOS data, or I would use the
14 defendant transaction data. I don't understand why you --

15 And then the question goes: How could you do a market
16 share analysis with ARCOS data or the defendant transaction
17 data?

18 Dr. McCann testified: Well, because the ARCOS data
19 identifies the distributors and the pharmacies, so if you
20 wanted to do a market share analysis of distributors
21 shipping to pharmacies in Lake and Trumbull County, you
22 would do it with the ARCOS data. I'm completely confused by
23 this line of questioning.

24 Question: What if you wanted to analyze dispensed
25 products?

1 Dr. McCann: I would still use the ARCOS data, not the
2 OARRS data.

3 Do you recall reading that testimony?

4 **A** Yeah, I have a vague recollection of that particular
5 passage.

6 **Q** So when you did your market share numbers that you
7 testified about, the 3.15 percent for Walmart, you used the
8 ARCOS data that Dr. McCann used, correct?

9 **A** That is correct. I did not use the OARRS data.

10 MS. FUMERTON: I'm going to pass the witness.
11 Thank you.

12 THE WITNESS: Thank you.

13 THE COURT: Anything from CVS or Walgreens? I
14 figure not, but I always ask.

15 MR. DELINSKY: No, thank you, Your Honor.

16 MS. SWIFT: No, Your Honor.

17 THE COURT: Thank you.

18 You're on, Mr. Lanier.

19 - - - - -

20 RECROSS-EXAMINATION

21 BY MR. LANIER:

22 **Q** Okay, sir, I want to go over what Ms. Fumerton asked
23 you at the end about the chart, but before that I want to go
24 over a couple of juror questions, and I want to just make
25 sure that we've covered them adequately. All right?

1 **A** Sure thing.

2 **Q** First of all, you were asked questions about the CDC
3 guidelines and the effects that it had on the numbers.

4 Remember those?

5 **A** Yes, I do.

6 **Q** All right. Now, you have no basis and expertise to
7 challenge Carmen Catizone on the CDC guidelines and how they
8 should be applied, fair?

9 **A** That's fair, yes.

10 **Q** All right. So when you do all your graphs and stuff,
11 that's based on assumptions that were provided to you in
12 essence by the legal team, not by Carmen Catizone, fair?

13 MS. FUMERTON: Objection.

14 **A** Yeah, those were -- those were not decisions that I
15 made.

16 **Q** Correct. Thank you.

17 Next, there was a juror question on whether or not you
18 had reviewed the exact prescriptions.

19 Remember that?

20 **A** Yes.

21 **Q** And as I understand it, you did not review the exact
22 prescriptions. You didn't put your eyeballs on them, did
23 you?

24 **A** I did not look at anything other than just the data
25 that was provided to me, not --

1 **Q** So when Ms. Fumerton revised the question to ask you
2 if you reviewed a data set, you understand the data set is
3 different than the exact prescriptions the juror was asking
4 about, right?

5 **A** I mean, if there were -- yeah, if the juror was asking
6 about the actual prescription on, like a piece of paper, I
7 did not see any actual prescriptions.

8 **Q** Thank you.

9 Next. You were asked about false positives and false
10 negatives.

11 Remember?

12 **A** Yeah.

13 **Q** Now, as a practical matter, you said there's no way --
14 or you had not done the analysis to provide how many false
15 negatives; in other words, things that should have triggered
16 a red flag but weren't counted as a red flag.

17 Right?

18 **A** I didn't compute any false negatives, that's correct.

19 **Q** And while you didn't do that on the data set that you
20 had, there are just, common sense, a lot of red flags that
21 may have been present that no one can determine from the
22 data set. Fair?

23 **A** Yeah, there's -- there might be plenty of reasons that
24 prescriptions, you know, are not potentially concerning.

25 **Q** So, for example, if the jury's heard about red flags

1 being triggered by the behavior of the person coming in to
2 buy the prescription, that's not something you're going to
3 see in the data set. It's something that's going to be
4 visually observed by a pharmacist. Fair?

5 MS. FUMERTON: Objection.

6 THE COURT: Overruled.

7 **A** Yeah, there's -- the data set is not going to
8 characterize every nuance of what people's behaviors are in
9 prescription --

10 **Q** Data set won't characterize, based on the way you
11 reviewed the data set at least, if three people come
12 together in the same car with the same prescription. It's
13 not going to be in the data set, is it?

14 **A** No, it's not.

15 **Q** Okay. So there are potential red flags that aren't
16 picked up by anybody's analysis, the false negatives, fair?

17 MS. FUMERTON: Objection.

18 THE COURT: Overruled.

19 **A** Yes, that's -- I think that's accurate.

20 **Q** All right. Next, you did a pills per county per
21 capita type analysis from one of the juror questions.
22 Remember?

23 **A** Yes, I do.

24 **Q** All right. I'm trying to make sure that we've got
25 that in the record right.

1 So you took this figure from Walmart's 1541A, and it
2 was 10 million --

3 **A** 10 million.

4 **Q** -- 380,575 pills. Right?

5 **A** Correct.

6 **Q** And to do the math off of that, it's not that tough.
7 You can take that and divide it by 450,000, which is roughly
8 the number of people in the two counties -- (pause)

9 MS. FUMERTON: Is that a question?

10 MR. LANIER: Hold on. I'm not through with
11 the question.

12 **Q** You can divide it, and you can get -- divide that
13 10,380,575 by the 450,000 in each county, and you can come
14 up with how many pills per capita; true?

15 **A** You can do that calculation, yes.

16 **Q** And roughly -- you got your handy-dandy iPhone --

17 **A** I can. Do you want me to take it out again?

18 **Q** -- or you want to just trust me, it's around 23,
19 figuring our iPhones do it the same?

20 **A** If that calculation were done correctly, then that's
21 certainly the procedure to do the calculation. I can do it
22 if you like.

23 **Q** Sure. Let's make it precise for the record. His
24 Honor likes precision.

25 **A** So we've got the 10,380,557 divided by -- and can you

1 show the population number?

2 Q 450,000.

3 A Can you show it exactly?

4 Q Which chart has that?

5 Here we go. Ooh, it's going to be higher than I
6 thought. 439,668 people.

7 A Right, so it's 23.6 dosage units per capita.

8 Q I was underestimating, wasn't I.

9 We could do the same thing, by the way, with the
10 hydrocodone. If the dosage units of hydrocodone were
11 8,551,367, you could divide that by the 439,668, and
12 determine how many hydrocodone pills per person were put out
13 by Walmart, couldn't you?

14 A You could do that calculation, sure.

15 Q And what would your answer be?

16 A I guess I should leave my calculator app open, huh?
17 8,551,367 divided by 439,668.
18 So that's 19.45.

19 Q I'm sorry, sir, I missed that.

20 A 19.45.

21 Q Hydrocodone pills per person, man, woman, and child;
22 fair?

23 A That's what that division is, yes.

24 Q All right.

25 MR. LANIER: Your Honor, I need to clarify

1 something on the record and with the witness.

2 I want to go to Plaintiffs' Demo 123.

3 **Q** This is from the OARRS data, and it is a summary of
4 market share by pharmacy.

5 Do you see that?

6 Do you remember the questions Ms. Fumerton asked you?

7 **A** Yes.

8 **Q** I had been under the understanding that this was
9 prepared by McCann himself and in his report. It's my
10 understanding this was pulled from the OARRS data. And so I
11 want the record to reflect that it is evidently not from
12 McCann's report but straight from the OARRS data.

13 MS. FUMERTON: Objection.

14 MR. LANIER: Your Honor, I think I need to put
15 that on the record.

16 MS. FUMERTON: We don't know where it's from
17 now.

18 MR. LANIER: Yes.

19 THE COURT: I don't know what -- you can ask
20 him a question.

21 MR. LANIER: Thank you.

22 BY MR. LANIER:

23 **Q** Sir, if the OARRS data shows these dosage units -- by
24 the way, those dosage units aren't that different than what
25 you found, is it?

1 **A** What are you referring to?

2 **Q** Well, you have dosage units of 10,380,000 for just
3 those years 2006 to 2014, right?

4 **A** Yeah. I mean, I can stand by the numbers that I
5 computed.

6 **Q** And these numbers go up to 2018, four years later,
7 correct?

8 MS. FUMERTON: Again, objection. Foundation.
9 We don't even know what this is.

10 THE COURT: Overruled. You can ask a
11 question, but I'd like to hear the question.

12 **Q** Sir, you understand there's a difference in years
13 here. There are four years in Demonstrative 123 that were
14 not included by you at the top end at your 10 million
15 figure. Fair?

16 **A** Yeah, that's what appears on the chart you're showing.

17 **Q** And by the same token, you've included 2006 and 2007,
18 two years at the bottom end, that are not at the chart, just
19 to be fair?

20 **A** That seems to be the difference.

21 **Q** All right. That's great?

22 MR. LANIER: Thank you, Judge. I wanted to
23 clarify the record.

24 THE COURT: Okay. Thank you very much,
25 Doctor.

1 THE WITNESS: Thank you.

2 THE COURT: We appreciate your appearance, and
3 safe travels back.

4 THE WITNESS: I appreciate it. Thank you,
5 everyone.

6 MR. DELINSKY: Your Honor, may we get our next
7 witness?

8 THE COURT: Yes, you may, Mr. Delinsky.

9 MS. FUMERTON: Your Honor, may I approach to
10 give you the juror questions?

11 THE COURT: Yes. Good idea.

12 MR. DELINSKY: Your Honor, CVS calls Robert
13 Hill.

14 THE COURT: Good afternoon, sir.

15 (Witness sworn.)

16 THE COURT: Thank you. Please be seated, and
17 you may take off your mask while testifying.

18 You may proceed, Mr. Delinsky.

19 MR. DELINSKY: Thank you, Your Honor.

20 And good afternoon, Mr. Hill.

21 THE WITNESS: Good afternoon.

22 THE COURT: Are you ready to go?

23 THE WITNESS: Yes.

24 THE COURT: All right.

25

Hill - (Direct by Delinsky)

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ROBERT HILL

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DIRECT EXAMINATION

BY MR. DELINSKY:

Q Mr. Hill, what I want to do first is explain to the ladies and gentlemen of the jury why you're here, and then we're going to move back in time and then go through some of your background and get to the real stuff. Okay?

A Okay.

Q Mr. Hill, did you formerly work at the United States Drug Enforcement Administration?

A Yes, I did.

Q For how long?

A 25 year, 3 months, and 21 days.

MR. LANIER: How many hours?

Q When did you start at DEA?

A September 10, 1989.

Q Did you retire -- or you already told us how long you remained there.

Did you retire from DEA?

A Yes, I did.

Q What year?

A December 31, 2014.

Q Prior to your retirement, did you hold any positions at DEA Headquarters?

1 **A** Yes, I did.

2 **Q** What were those positions?

3 **A** I was a staff coordinator. I was the section chief of
4 the Pharmaceutical Investigation section. And I was the
5 executive assistant to the deputy assistant administrator
6 for the Office of Diversion Control.

7 **Q** And as executive assistant, was that essentially in
8 plain terms the chief of staff to the deputy assistant
9 administrator for the Office of Diversion Control?

10 **A** That's correct.

11 **Q** Okay. And, Mr. Hill, are you here to provide expert
12 opinions in this case?

13 **A** Yes.

14 **Q** All right. Now let's step back. We know why you're
15 here, and let's just step back.

16 Where do you live?

17 **A** Centreville, Virginia.

18 **Q** That's not where you grew up though, right?

19 **A** No, it's not.

20 **Q** Where did you grow up?

21 **A** Detroit, Michigan.

22 **Q** Okay. Let's just focus on the present for now.

23 Do you live in the same general area as DEA
24 Headquarters?

25 **A** Yes.

1 **Q** About how many miles away?

2 **A** About 20 miles west.

3 **Q** Married?

4 **A** Yes.

5 **Q** For how long?

6 **A** 26 years.

7 **Q** Does your wife have a background in law enforcement?

8 **A** Yes.

9 **Q** Was she an agent?

10 **A** Yes.

11 **Q** For what agency or agencies?

12 **A** 11 years with Secret Service and then 14 years with
13 TSA.

14 **Q** You have a son?

15 **A** Yes.

16 **Q** In college?

17 **A** Yes.

18 **Q** Do you keep him close?

19 **A** Yes.

20 **Q** Because you feel you need to keep him close?

21 **A** Yes.

22 **Q** Is he in school in Virginia not too far from where you
23 live?

24 **A** Yes.

25 **Q** Okay. I won't ask you why you have to keep him close,

1 but I have a son so...

2 You grew up in Michigan. Did you say Detroit?

3 **A** Yes, I grew up in Detroit, Michigan.

4 **Q** What neighborhood?

5 **A** West side.

6 **Q** Where did you go to high school?

7 **A** Chauncey High School.

8 **Q** Did you attend college?

9 **A** Yes, I did.

10 **Q** Where?

11 **A** Wayne State University in Detroit, Michigan.

12 **Q** Okay. What did you study when you were at Wayne
13 State?

14 **A** Criminal justice.

15 **Q** Why did you study criminal justice?

16 **A** Because I wanted to work in law enforcement when I
17 graduated.

18 **Q** When did you realize you wanted to work in law
19 enforcement?

20 **A** When I was younger, around middle school.

21 **Q** Okay. Did you obtain your degree from Wayne State?

22 **A** Yes, I did.

23 **Q** What year?

24 **A** May of 1988.

25 **Q** Before we move to your first job, let's just get

1 something out of the way.

2 Your degree was in criminal justice?

3 **A** That's correct.

4 **Q** It was not in pharmacy?

5 **A** That's correct.

6 **Q** You don't have a pharmacy degree?

7 **A** That's correct.

8 **Q** Are you a pharmacist?

9 **A** No, I am not.

10 **Q** Is there any doubt about that?

11 **A** No doubt at all.

12 **Q** Have you ever been a pharmacist?

13 MR. WEINBERGER: We'll stipulate he was never
14 a pharmacist, isn't a pharmacist, wasn't a pharmacist.

15 **Q** All right. Let's just get this out of the way, okay,
16 once and for all.

17 Mr. Hill, true, false, you are not a pharmacist?

18 **A** True.

19 **Q** Okay. Are you, however, an expert in drug law
20 enforcement?

21 **A** Yes.

22 **Q** Are you an expert in DEA compliance?

23 **A** Yes.

24 **Q** Are you an expert in pharmaceutical drug diversion?

25 **A** Yes.

1 Q Okay. What did you do right after college?

2 A I became a police officer in the City of Dearborn,
3 Michigan.

4 Q Were you on the beat, undercover, mix of both?

5 A Combination of both.

6 Q Okay. Were you in uniform, plainclothes?

7 A A combination of both.

8 Q How long did you serve for the City of Dearborn,
9 Michigan, as a police officer?

10 A It would have been just over a year. I got hired
11 there August of 1988, and I left in September of 1989.

12 Q Why did you leave?

13 A I got hired by DEA.

14 Q Why did you want to go to DEA?

15 A When I was a young kid, of course every kid when you
16 think of law enforcement, you want to work for the FBI. But
17 as I learned about DEA around in middle school, I thought
18 that would be fun to do and a nice agency to work for. So I
19 reached out to the recruiter, had them send me some
20 information so I can know how to prepare myself. And then
21 when I graduated, I applied to DEA, like right before I
22 graduated.

23 Q Did you start at DEA in 1989?

24 A Yes, September 10, 1989.

25 Q What was your position at DEA at the time?

1 **A** A special agent.

2 **Q** Where did you work?

3 **A** Well, after you first get hired, you go to Quantico,
4 Virginia, to go through your training, and then you come
5 back. And so I came back at the end of December, and I was
6 assigned to the Detroit Field Division, which is where I was
7 hired. So my whole time started at the Detroit Field
8 Division.

9 **Q** And Quantico, Virginia, I associate that with the FBI.
10 Is that where DEA trains as well?

11 **A** Yes. At the time, DEA was training at the FBI
12 Academy.

13 **Q** Okay. The Detroit Field Office, did that cover only
14 Detroit, only Michigan, or a broader geography?

15 **A** It was a broader geography.

16 **Q** What other geographies did it cover?

17 **A** The Detroit Field Division covered Michigan, Ohio, and
18 Kentucky.

19 **Q** What did you do as a special agent?

20 **A** You worked cases on individuals and organizations that
21 were alleged to have violated the Controlled Substance Act
22 or other state narcotics violations.

23 **Q** Work undercover?

24 **A** Yes.

25 **Q** Did you handle cases involving heroin?

1 **A** Yes.

2 **Q** What was your first undercover case, without divulging
3 details you can't divulge?

4 **A** It was a heroin case.

5 **Q** Was heroin a serious problem at that point in time?

6 **A** Yes, it was.

7 **Q** Okay. And that's late '80s, early '90s?

8 **A** Early '90s, late '80s, early '90s.

9 **Q** Any major drug rings that you worked on that were
10 public?

11 **A** Yes.

12 **Q** Can you name a few?

13 **A** The Young Boys Incorporated, phase II. The Colaccio
14 Crowley [ph] organization.

15 **Q** Where were they based?

16 **A** They were based out of the Detroit metro area, as well
17 as other investigations that had a regional or national or
18 international effect to them.

19 **Q** Did you work on cases involving importation from
20 Columbia?

21 **A** Yes.

22 **Q** Did you work on cases that involved importation from
23 places like Burma, Laos, Thailand?

24 **A** Yes.

25 **Q** Pakistan and Iran?

1 **A** And Afghanistan, which is the Golden Crescent, yes.

2 **Q** Did you work on any pharmaceutical cases?

3 **A** Only as a support at that time supporting the
4 diversion groups that were in Detroit.

5 **Q** Okay. Can you explain to the ladies and gentlemen of
6 the jury how DEA is organized in terms of its division
7 between DIs, diversion investigators, and special agents?

8 **A** Yes. So the special agents are the actual law
9 enforcement gun carriers that can make arrests and do search
10 warrants; where the diversion investigators, they can do
11 investigations, but there's certain things that they can't
12 do on the street, like work undercover or do surveillance,
13 without the assistance of a special agent.

14 **Q** Okay. I asked you about pharmaceutical cases. Can
15 you explain what those are?

16 **A** Yes.

17 **Q** I think we know, but just out of an abundance of
18 caution.

19 **A** Pharmaceutical cases are cases that are involving
20 controlled pharmaceuticals that are being diverted for an
21 illicit or illegitimate purpose.

22 **Q** So to put it in language I understand best, are those
23 cases involving prescription drugs?

24 **A** Yes.

25 **Q** Okay, that are classified as controlled substances?

1 **A** Yes.

2 **Q** Okay. Insofar as you assisted DIs in those cases when
3 you were a special agent, did you do undercover work?

4 **A** Yes, we would do undercover to help them, yes.

5 **Q** Did you do undercover work against doctors who were
6 suspected of improperly prescribing controlled substances?

7 **A** Yes.

8 **Q** Okay. Did you do surveillance against doctors?

9 **A** Yes.

10 **Q** Okay. Did you do surveillance and undercover work
11 against persons who were going to doctors to try to get
12 prescriptions they shouldn't get?

13 **A** Yes.

14 **Q** Did you work on investigations of pharmacies?

15 **A** Yes.

16 **Q** Did you ever go undercover to try to get, you know,
17 bogus prescriptions filled?

18 **A** Yes.

19 **Q** And how long were you in this position as a regular
20 DEA special agent in Detroit?

21 **A** I was assigned to Detroit until November of 1998.

22 **Q** Okay. Now, I want to -- wasn't there a switch
23 starting in '96 or so?

24 **A** Yes.

25 **Q** Okay. We're going to get to that in a sec, okay?

1 **A** Okay.

2 **Q** But before we move there, did you have a philosophy
3 about how to go about your work as a special agent for the
4 DEA?

5 **A** Yes.

6 **Q** Okay. What was your philosophy?

7 **A** My philosophy was to even though you're working
8 investigations, you would make sure that you treat the
9 people that you're targeting with the utmost respect because
10 they're still human, and you would also have the sympathy
11 for them and the empathy for them to put yourself in their
12 shoes. So you would always, if you could, try and give them
13 a second chance on life.

14 **Q** When you were a special agent for the DEA, who were
15 you serving?

16 **A** The American public.

17 **Q** All right. Special agent, working cases, '89 to '96,
18 right?

19 **A** That's correct.

20 **Q** Okay. What happened in '96?

21 **A** In 1996 I was reassigned as the divisional coordinator
22 in June or July of 1996.

23 **Q** Now, as the divisional coordinator, were you in charge
24 of training?

25 **A** Yes.

1 **Q** Who did you train?

2 **A** DEA employees, whether they were special agents or
3 diversion investigators, or professional employees which we
4 would call PATCO; other federal law enforcement officers, as
5 well as other state and local officers. And that would be
6 anyone within the states of Michigan, Ohio, and Kentucky.

7 **Q** Okay. So your training obligations beginning in 1996
8 extended across three states?

9 **A** That's correct.

10 **Q** Including Ohio?

11 **A** Yes.

12 **Q** It included federal law enforcement?

13 **A** Yes.

14 **Q** And state law enforcement?

15 **A** Yes.

16 **Q** And what would you provide training on?

17 **A** On drug investigations, surveillance, undercover,
18 tactical training, administrative training, and legal
19 training.

20 **Q** Did the training concern investigations of illicit
21 drugs?

22 **A** Yes, it did.

23 **Q** Did the training concern investigations of
24 prescription drugs?

25 **A** Yes, it did, if the area that we were putting on the

1 training, if that was a drug issue of concern or drug of
2 concern.

3 **Q** For how long did you serve as the training coordinator
4 out of the Detroit Field Office?

5 **A** I believe it was from, like I said, June or July of
6 1996 until November of 1998.

7 **Q** Where did you go in 1998?

8 **A** I was assigned down in Central America to the country
9 of Belize.

10 **Q** And were you assigned by DEA?

11 **A** Yes. I was reassigned by DEA, yes.

12 **Q** Okay. Bad weather, right?

13 **A** It was hot.

14 **Q** Good scuba?

15 **A** I didn't try any.

16 **Q** I wouldn't have either.

17 What were you doing for DEA in Belize?

18 **A** When I was in Belize, my duties were to serve as an
19 adviser to the U.S. Ambassador to Belize, as well as to the
20 host nation, which was the Government of Belize, on
21 counternarcotics issues.

22 **Q** Were there issues with narcotics at that time in
23 Belize?

24 **A** Yes.

25 **Q** For how long did you serve in that position?

1 **A** I was in that position until April of 2000, when I got
2 promoted to a group supervisor.

3 **Q** Okay. Where were you appointed to a group supervisor?

4 **A** In Detroit, at the Detroit Field Division.

5 **Q** So in 2000 you moved back to Detroit from Belize?

6 **A** Yes, in April of 2000.

7 **Q** Okay. And what were your responsibilities as a
8 supervisory agent or as a group supervisor?

9 **A** As the group supervisor, you monitor the day-to-day
10 activities of the agents and state and local task force
11 officers that you have in your group regarding
12 investigations that are dealing with violations of the
13 Controlled Substance Act or state narcotics statutes.

14 **Q** Did you supervise pharmaceutical investigations?

15 **A** Supervising would not be the correct way. It would be
16 more of a support role, because my group, I was the group
17 supervisor for Enforcement Group 3. And Enforcement Group 3
18 was the designated Diversion Response Group for the Detroit
19 Field Division also.

20 **Q** All right. Diversion meaning diversion of
21 prescription drugs?

22 **A** Yes.

23 **Q** Correct, all right.

24 How long were you in this role in Detroit as a
25 supervisory agent?

1 **A** From April of 2000 until October of 2005.

2 **Q** Okay. What did you do next?

3 **A** I was reassigned to headquarters, DEA Headquarters.

4 **Q** Okay. And I think you already testified about that.

5 DEA Headquarters is in northern Virginia?

6 **A** Yes. Arlington, Virginia, yes.

7 **Q** So did you move your family at that point in time?

8 **A** Yes.

9 **Q** Okay. What were you assigned to do at DEA
10 Headquarters? And I think we're at 2005. Do I have that
11 right?

12 **A** Yes, October 2005.

13 **Q** What were you assigned to do?

14 **A** I was assigned -- so the -- as a staff coordinator to
15 the Latin and Caribbean section.

16 **Q** What were your responsibilities as staff coordinator
17 in that section?

18 **A** Those responsibilities were to assist the DEA offices
19 that were located in Latin America or the Caribbean in the
20 furtherance of drug investigations or investigations dealing
21 with nexuses to terrorist groups.

22 **Q** Were there significant narcotics issues in that region
23 that you were responsible for handling?

24 **A** Yes. That would have been in the Bahamas, Haiti,
25 Surinam, and San Juan, Puerto Rico.

1 **Q** How long were you in this position?

2 **A** I was in that position until December of 2008, when I
3 was promoted again.

4 **Q** What position were you promoted to?

5 **A** I was promoted to the section chief of the
6 Pharmaceutical Investigation section in the Office of
7 Diversion Control.

8 **Q** Okay. Let's just stop here for a moment.

9 Who promoted you to that position?

10 **A** Joseph Rannazzisi.

11 **Q** Okay. Did you know Mr. Rannazzisi?

12 **A** Yes.

13 **Q** How long had you known him?

14 **A** Since I came on with DEA, since 1989.

15 **Q** How did you know him?

16 **A** We were special agents together in Detroit. We were
17 subsequently supervisors together in Detroit. Then Joe was
18 promoted, and he became my direct supervisor as the
19 assistant special agent in charge. Then Joe was
20 subsequently transferred to Headquarters.

21 Then when I was subsequently transferred to
22 Headquarters and assigned to the Latin and Caribbean
23 section, Joe was my second line supervisor when I was in
24 that function. And then he subsequently promoted me to be
25 the section chief of the Pharmaceutical Investigation

1 section.

2 **Q** Okay. As section chief of the Pharmaceutical
3 Investigation section, what were your responsibilities?

4 **A** My responsibility was first to serve as DEA technical
5 expert on strategies and programs to address the diversion
6 of controlled pharmaceuticals.

7 **Q** Did you play any role or oversight in investigations
8 of DEA registrants regarding the diversion of prescription
9 drugs?

10 **A** Yes.

11 **Q** Did that include pharmacies?

12 **A** Yes.

13 **Q** Did you oversee investigations and actions by DEA
14 against nonregistrants regarding the diversion of
15 prescription drugs?

16 **A** Yes.

17 **Q** How would that come up that DEA would be proceeding
18 against a nonregistrant who was not sort of registered with
19 it?

20 **A** Well, what you would have is if you would have
21 traditional street organizations that were involved in
22 selling the illicit drugs, meaning, you know, like the
23 cocaine, heroin, marijuana, well, then if they would branch
24 off and they would start selling controlled pharmaceuticals.
25 So because they -- and so what we would call them is

1 polydrug organizations.

2 And so because they were involved with controlled
3 pharmaceuticals, that also fell under the auspices of the
4 Pharmaceutical Investigation section even though they were
5 not DEA registrants.

6 **Q** So am I right that as section chief of the
7 Pharmaceutical Investigation section, your focus was
8 prescription drugs, correct?

9 **A** Yes.

10 **Q** Now, there are other parts of DEA that focus on
11 illegal drugs, correct?

12 **A** Yes.

13 **Q** Okay. And that was -- those were staffed by other --
14 and led by other persons?

15 **A** And other sections, yes.

16 **Q** Okay. Did any of the work you did as section chief of
17 the Pharmaceutical Investigations concern prescription
18 opioid medications?

19 **A** Yes.

20 **Q** Okay. And, Mr. Hill, I notice that you're being very
21 careful and clipped in some of your answers here.

22 Are you allowed to disclose nonpublic information
23 about your work at DEA?

24 **A** No.

25 **Q** Are those just the ordinary rules that apply to former

1 DEA and other Government officials?

2 **A** Yes.

3 **Q** All right. Let's just stop here. Really quick
4 question.

5 When DEA investigates or looks at pharmacies, does it
6 consider the ratio of noncontrolled prescriptions the
7 pharmacy fills to the controlled prescriptions the pharmacy
8 fills?

9 **A** Yes.

10 **Q** Why?

11 **A** Because it gives you an inclination on if the pharmacy
12 is performing as a normal pharmacy or within the confines of
13 a normal pharmacy.

14 **Q** And by "normal pharmacy," do you mean a pharmacy
15 that's meeting the overall medicine needs of a community?

16 **A** Meeting the overall medicine needs of the community,
17 as well as operating within the compliance of state and
18 federal regulations.

19 **Q** Is there a general, and I mean general, benchmark that
20 DEA looks to for a healthy noncontrolled-prescription to
21 controlled-prescription ratio?

22 **A** Yes.

23 **Q** And what's that general guideline?

24 **A** 80 to 20, meaning 80 percent noncontrol, 20 percent
25 controls.

1 **Q** And if as a general matter that's a guideline that
2 might suggest that if that's the breakdown, a pharmacy's
3 relatively healthy.

4 Do I have that right?

5 **A** Yes.

6 **Q** Now, is that standard a be-all, end-all?

7 **A** No, not at all.

8 **Q** Can you have pharmacies that dispense a much higher
9 percentage of controlled substances that can be a healthy
10 pharmacy doing so properly?

11 **A** Yes.

12 **Q** And likewise, can you have a pharmacy that's
13 dispensing a lower percentage of controlled substances but
14 isn't doing it the right way?

15 MR. WEINBERGER: Your Honor, I think we --

16 THE COURT: I don't want a speaking objection.
17 So is there an objection?

18 MR. WEINBERGER: Sorry. Yes, Your Honor.

19 THE COURT: All right. Well, let's go on the
20 headphones.

21 (At side bar at 2:21 p.m.)

22 MR. WEINBERGER: Your Honor, we've been going
23 about 35 minutes now, and 90 percent of these questions have
24 been leading questions. And for purposes of background, no
25 issues, but if we could just have --

1 THE COURT: All right. This is an expert. I
2 assume he's written a report, so I allow some leeway with
3 experts so we can get through it. So I didn't think that
4 was a terrible question. So, but I guess, Mr. Delinsky, if
5 you can do a little less leading, I appreciate it.

6 MR. DELINSKY: Will do, Your Honor.

7 (In open court at 2:22 p.m.)

8 BY MR. DELINSKY:

9 Q Mr. Hill, do you remember the question or should I
10 rephrase it?

11 A Could you rephrase it, please?

12 Q Sure.

13 If a pharmacy dispenses less than 20 percent
14 controlled substances, does that necessarily mean that it's
15 dispensing the right way?

16 A No, it does not.

17 Q So this 80/20 -- is this 80/20 just a guideline?

18 A Yes.

19 Q Okay. Do you know what ARCOS data is?

20 A Yes.

21 Q What is it?

22 A ARCOS data is data that is presented and given to DEA
23 from registrants depending on their business model, and it's
24 either if they're a manufacturer or distributor. And what
25 it does is it's a comprehensive system that follows the

1 movement of controlled substances from the manufacturing
2 point, to the distribution point, to the end user that when
3 it's dispensed when it goes to a pharmacy.

4 **Q** So does the ARCOS data, and I think you may have
5 answered this, include data about how much of a controlled
6 substance a pharmacy receives?

7 **A** Yes, if it's ARCOS reportable.

8 **Q** And does ARCOS-reportable data include data on
9 prescription pain medications that are classified as
10 Schedule II controlled substances?

11 **A** Yes.

12 **Q** Is there a group at DEA that crunches the ARCOS
13 numbers and analyzes them?

14 **A** Yes.

15 **Q** At the time you were head of the Pharmaceutical
16 Investigation section, to whom did that group report?

17 **A** Myself as the section chief.

18 **Q** For how long were you in this position?

19 **A** I was in that position from January, I believe it was
20 the 9th, of 2009, till June 30 of 2012.

21 **Q** What was your next position at DEA?

22 **A** I was reassigned to be the executive assistant to the
23 deputy assistant administrator for the Office of Diversion
24 Control.

25 **Q** Who was the deputy assistant administer for the Office

1 of Diversion Control at the time?

2 **A** Joseph Rannazzisi.

3 **Q** Were you -- would it be fair to characterize your
4 responsibilities as being his chief of staff?

5 **A** Yes.

6 **Q** Okay. In that position, did you work on issues
7 pertaining to the diversion of controlled substances?

8 **A** Yes.

9 **Q** Pertaining to the -- did you work on issues pertaining
10 to the regulation of pharmacies, doctors, and other
11 registrants in connection with the prescribing and
12 dispensing of controlled substances?

13 **A** Yes.

14 **Q** Did you work on DEA investigations of registrants?

15 **A** Yes.

16 **Q** Did you work on DEA education efforts on the issues of
17 pharmaceutical drug diversion and CSA compliance?

18 **A** Yes.

19 **Q** For how long were you in this position?

20 **A** I was in that position until I retired on December 31,
21 2014.

22 **Q** Okay. When you were in this position, did you make
23 presentations?

24 **A** Yes.

25 **Q** Did you make presentations at Pharmacy Diversion

1 Awareness conferences?

2 **A** Yes.

3 **Q** Are those called PDACs?

4 **A** Yes.

5 **Q** Can you tell the ladies and gentlemen of the jury what
6 a PDAC is?

7 **A** A PDAC is a conference that DEA would put on for
8 pharmacy registrants, which means you had to work for a
9 pharmacy registrant to attend. It was a one-day course that
10 went for 8 hours over two days, so that way it was always
11 done on the weekend, so if you couldn't make it on one day
12 you could try the other. It was always on a Saturday and a
13 Sunday. And it was to make the pharmacy registrant
14 community aware of the prescription drug abuse issue within
15 the United States.

16 **Q** And when you say pharmacy registrant, let me try to
17 bring it down. Do you mean these presentations were given
18 to pharmacists?

19 **A** They were given to pharmacists, yes.

20 **Q** Were the subjects of these -- did the subjects of
21 these presentations include corresponding responsibility?

22 **A** Yes.

23 **Q** Did they contain a discussion of red flags or
24 potential red flags?

25 **A** Yes.

1 **Q** And when did DEA start giving these PDAC
2 presentations?

3 **A** The first one would have been in September of 2011.

4 **Q** Why didn't DEA start until 2011?

5 **A** It's hard to say why at the time we didn't start till
6 2011, but it was the time to make a formal program that we
7 could do and make sure that the pharmacy community was
8 available and was able to get that information.

9 **Q** Were these PDAC conferences that began in 2011 the
10 first time that DEA officially provided lists of red flags
11 or potential red flags to the pharmacy industry?

12 **A** Yes.

13 **Q** Now, there may have been informal meetings and
14 discussions on that subject?

15 **A** Of course, there would have been formal or informal,
16 yes.

17 **Q** Okay. But am I right that these PDAC conferences
18 beginning in 2011 were the first official effort to educate
19 the pharmacy community on these potential red flags?

20 MR. WEINBERGER: Objection.

21 THE COURT: Overruled.

22 **A** Yes.

23 **Q** In these presentations, did you discuss the opioid
24 epidemic?

25 **A** Yes.

1 **Q** Okay. In your opinion, is there an opioid epidemic?

2 **A** Yes.

3 **Q** Is your opinion based on a particular Government
4 announcement, or something else?

5 **A** My opinion is based on the particular Government
6 announcement at the time.

7 **Q** What announcement?

8 **A** In February of 2011, the CDC publicly stated that the
9 United States was in the grips of an opioid epidemic. And
10 then in April of 2011, the administration unveiled their
11 Prescription Drug Abuse Prevention Plan.

12 **Q** So do you key the opioid epidemic to 2011-ish?

13 **A** Yes, as an official epidemic, yes.

14 **Q** Is that to say that people weren't struggling and
15 suffering and dying before then?

16 **A** Oh, they were before that, yes.

17 **Q** Mr. Hill, I noticed in some of your presentations
18 there's images, like firearms, and you analogize them to
19 prescription drugs.

20 **A** That's correct.

21 **Q** Can you tell the ladies and gentlemen of the jury what
22 you were trying to communicate when you spoke about these
23 issues?

24 **A** Well, yes. First of all, with firearms, you should
25 always assume that a firearm is loaded, so you always treat

1 it as if it's loaded and that it could cause harm, so you
2 need to be careful with it.

3 So I would analogize prescription drugs under that
4 analogy, that if you are not careful with prescription drugs
5 and if you do not, you know, use them in the correct manner,
6 they could be harmful and dangerous, just like a loaded
7 weapon.

8 **Q** Okay. Mr. Hill, I want to talk before we move on, and
9 we'll try to do this quickly and just do a sampling, some of
10 the -- well, have you given presentations apart from the
11 PDAC conferences?

12 **A** Yes.

13 **Q** And how many of these PDAC conferences do you recall
14 giving to pharmacists and pharmacy registrants?

15 **A** That I participated in?

16 **Q** Correct.

17 **A** Approximately five of them.

18 **Q** Okay. Did you give presentations on prescription drug
19 diversion and related issues to foreign governments?

20 **A** Yes.

21 **Q** Okay. I'm going to put up -- and this is a
22 Demonstrative Exhibit. It's your CV, CVS Demo 02.

23 And I have highlighted here. Did you present to the
24 Romanian Government Officials?

25 **A** Yes, but that was not the first time I presented

1 overseas. If you look at the one above it, I did a
2 presentation in Israel and Jerusalem. And that was on
3 prescription drug abuse in the United States.

4 **Q** How about looking a little further down. Mexican
5 Government Officials in 2011?

6 **A** Yes.

7 **Q** Is that another presentation you gave?

8 **A** Yes, on prescription drug abuse and illicit chemical
9 trafficking in the United States.

10 **Q** Okay. Did you present to any members of Congress?

11 **A** Yes.

12 **Q** Okay. Did you present to any members of Congress from
13 Ohio?

14 **A** Yes. Mr. Joyce.

15 **Q** Who's Mr. Joyce?

16 **A** He is the Congressional Representative for the 14th
17 District.

18 **Q** And what does the 14th District include?

19 **A** It includes Lake, Trumbull, Summit, Cuyahoga, and I
20 think the other county is pronounced maybe "Geauga" or
21 Geauga. And then there's another one that I can't pronounce
22 that it covers a part of it too.

23 **Q** Is it Ashtabula?

24 **A** Yes, sir, that's it.

25 **Q** Mr. Lanier started singing a song about that about two

1 hours ago.

2 **A** Okay. That's it.

3 **Q** And it's not all of Cuyahoga or Summit, right?

4 **A** No, his district is just partial of those counties.

5 **Q** How did that come about?

6 **A** I was giving a presentation, it was the Federal
7 response to the heroin epidemic to members of Congress and
8 their staff. And he was a part of it, so he later
9 approached me to ask me would I give a presentation, that he
10 was putting on a conference for the northeast Ohio elected
11 officials.

12 **Q** And what was the subject matter of your presentation
13 at that conference?

14 **A** It was on prescription drug abuse and the circle of
15 addiction.

16 **Q** And you talk about in a lot of these presentations
17 prescription drug abuse.

18 What do you mean by that?

19 **A** Prescription drug abuse means when a prescription drug
20 is used for a not legitimate purpose. And what I mean by
21 that is that you're using it not followed by the therapeutic
22 value that it's supposed to be stated to be using.

23 So an example of that would be if the doctor or the
24 practitioner that writes you the script says take one every
25 4 hours or every 6 hours, but you say I'm going to take

1 three or four of them every 4 or 6 hours.

2 **Q** What if someone takes pills from the prescription
3 bottle of their parent out of the medicine cabinet? Would
4 that fall within the umbrella of prescription drug abuse
5 that you were presenting about?

6 **A** Yes, because if you're taking a prescription drug that
7 was not written for you as the end user, that's misabuse and
8 diversion.

9 **Q** Did you make presentations to law enforcement?

10 **A** Yes.

11 **Q** Okay. Here, and I don't know if this is quite law
12 enforcement because it's lawyers, but here's one. The U.S.
13 Attorney's Office, Western District of Pennsylvania,
14 Prescription Drug Abuse Summit, 2012.

15 What was that presentation?

16 **A** That was a presentation to address the prescription
17 drug abuse problems and trends that were going on in the
18 United States, and it's also what was being seen in that
19 district.

20 **Q** What's the U.S. Attorney's Office?

21 **A** The U.S. Attorney's Office is the office where the
22 U.S. Attorney is the chief law enforcement officer for
23 whatever district that that U.S. Attorney's Office is in.
24 So --

25 **Q** I'm sorry. Keep going.

1 **A** So when you think of U.S. Attorneys, you would think
2 of them as also being like prosecutors.

3 **Q** They're lawyers?

4 **A** Yes.

5 **Q** Sorry.

6 **A** Some of them are.

7 **Q** When DEA brings a case in court, for either civil
8 penalties or a criminal case, does it work with the U.S.
9 Attorney's Offices?

10 **A** It works with the U.S. Attorney's Office as well as it
11 could work with a state prosecutor's office as well.

12 **Q** A little further down it looks like you gave a talk to
13 the West Virginia State Police Academy in 2012.

14 Do you recall that?

15 **A** Yes.

16 **Q** And what did that concern?

17 **A** That concerned prescription drug abuse and trends.
18 And what that was, the state of West Virginia had reached
19 out and wanted DEA to come out and train and make their
20 narcotics units available on what we were seeing with
21 prescription drug abuse throughout the United States, and to
22 help them.

23 **Q** Federal Bureau of Investigation (FBI) National Academy
24 class, what was that presentation?

25 **A** That was on prescription drug abuse and trends also.

1 **Q** And it looks like you gave this presentation to FBI
2 classes routinely over the years.

3 **A** Yes. What the FBI National Academy classes are, they
4 are an Academy class where the upper echelon of police
5 departments throughout the United States get selected to be
6 trained at the FBI Academy for I believe it's 12 weeks, and
7 so that way it makes them better executives.

8 **Q** Did you ever present, other than the PDAC conferences,
9 to pharmacists or pharmacy students?

10 **A** Yes.

11 **Q** Do you recall any of those presentations?

12 **A** Yes.

13 **Q** Where were they?

14 **A** In California I spoke at a college of pharmacy there,
15 at two different schools. I spoke at different pharmacy
16 associations throughout the United States, in Michigan, in
17 Nevada, and -- Michigan, Nevada. I believe somewhere, like
18 maybe Boston, Massachusetts, or somewhere there.

19 And I spoke for the Tennessee Department of Health for
20 all their healthcare employees. I was speaking at a lot of
21 locations.

22 **Q** And did those presentations to pharmacists concern
23 presentations on corresponding responsibility?

24 **A** Yes.

25 **Q** After you retired from DEA in 2014, what did you do

1 next?

2 **A** After I retired from DEA in 2014, I took a job with
3 Amneal Pharmaceuticals.

4 **Q** What is Amneal Pharmaceuticals?

5 **A** They are a manufacturer of controls and noncontrol
6 drugs.

7 **Q** Okay. And what was your role for Amneal
8 Pharmaceuticals?

9 **A** I was the director of DEA Compliance and Corporate
10 Security.

11 **Q** For how long did you work there?

12 **A** Approximately three and a half years.

13 **Q** And what were your responsibilities? What was your
14 charge at Amneal Pharmaceuticals?

15 **A** My charge was to ensure that any of the Amneal
16 locations that were authorized to handle controlled
17 substances were in compliance with the CSA, its implementing
18 regulations, which is the CFR, as well as state and local
19 narcotic statutes for handling controlled substances.

20 **Q** What kind of prescription drugs did Amneal make?

21 **A** Amneal made prescription drugs from all gamuts, from
22 controlled drugs to noncontrolled drugs.

23 **Q** Did Amneal manufacturer prescription opioids?

24 **A** Yes.

25 **Q** What kind of noncontrolled drugs did Amneal

1 manufacture when you were there?

2 **A** Like diabetes medications, blood pressure medications.
3 I believe like penicillins, kind of the standard
4 noncontrols.

5 **Q** Do you recall what percentage of Amneal's business was
6 a controlled substance versus a noncontrol?

7 **A** Yes. It would range anywhere from, like 12 percent to
8 20 percent, 25 percent.

9 **Q** Did you work for free for Amneal?

10 **A** No, I did not.

11 **Q** Did they compensate you?

12 **A** That's correct.

13 **Q** And there was a bonus plan?

14 **A** Yes.

15 **Q** Did you get bonuses under that plan?

16 **A** Yes.

17 **Q** Was there anything improper about that?

18 **A** No.

19 **Q** Can you tell the ladies and gentlemen of the jury why
20 you moved from DEA after your retirement to Amneal?

21 **A** A former DEA employee had reached out to me and asked
22 me if I would be interested in coming to Amneal to help them
23 make sure that their program was good and in compliance.

24 And at first I told him no, and then later on I
25 thought about it and said, you know, you always as a

1 Government employee kind of have in the back of your mind,
2 could you succeed in private industry.

3 So after I told him no, I kind of thought about it
4 and, as I said, I wondered if I could succeed in private
5 industry, so then I decided to do it.

6 **Q** Did the CEO, the chief executive of Amneal, give you
7 any instructions upon being hired?

8 **A** Yes.

9 **Q** What were his instructions to you?

10 **A** To ensure that all of Amneal facilities that were
11 handling controlled substances were as compliant as they
12 could possibly be.

13 **Q** For how long were you at Amneal?

14 **A** Approximately three and a half years.

15 **Q** When did you retire?

16 **A** I wouldn't say I retired. I just -- I left because I
17 got tired of the commute and everything. So I decided to
18 resign, which would have been July 18 of 2018.

19 **Q** Okay. And let's tell the ladies and gentlemen of the
20 jury about that before we get to your opinions.

21 You were living in northern Virginia at the time?

22 **A** Yes, and my family was still there, yes.

23 **Q** Your son and your wife are there, correct?

24 **A** Yes.

25 **Q** And is my memory right that Amneal was headquartered

1 in New Jersey or Long Island?

2 **A** Their headquarters were in New Jersey, but I would
3 spend a lot of time up in New York and New Jersey.

4 **Q** So it was a really uncomfortable commute?

5 **A** Yes, it was. If you're going from Virginia to
6 Brookhaven, if anybody has ever done that drive, it could be
7 an 8 to 10-hour drive.

8 **Q** Now, Mr. Hill, has CVS, through me, I guess, engaged
9 you to provide expert opinions in this case?

10 **A** Yes.

11 **Q** Are the opinions you're about to give yours or CVS's?

12 **A** They're my opinions.

13 **Q** When did CVS first retain you in connection with
14 opioid litigations?

15 **A** It would have been in September of 2018.

16 **Q** When did you begin working on this particular case?

17 **A** It would have been January of 2021.

18 **Q** Did you write a report in this case?

19 **A** Yes, I did.

20 **Q** Approximately how long is that report, if you
21 remember?

22 **A** Approximately 46 pages.

23 **Q** Have you been deposed in this case?

24 **A** Yes.

25 **Q** Okay. How many hours have you devoted to the

1 preparation of your opinions in connection with your
2 engagement by CVS?

3 **A** When you're asking hours, are you asking hours since
4 January?

5 **Q** Do you recall since January? Why don't you just do
6 the whole since 2018.

7 **A** Since 2018, the hours that I've worked is
8 approximately 1,029 hours.

9 **Q** And has that included reviewing documents?

10 **A** Yes.

11 **Q** Reviewing testimony?

12 **A** Yes.

13 **Q** Reviewing laws?

14 **A** Yes.

15 **Q** Preparing your opinions?

16 **A** Yes.

17 **Q** Writing reports?

18 **A** Yes.

19 **Q** And testifying?

20 **A** Yes.

21 **Q** Okay. Like every expert witness who's appeared in
22 this trial so far, you're being paid, right?

23 **A** Yes.

24 **Q** How much have you received on your time thus far?

25 **A** For overall since 2018?

1 **Q** Correct, overall.

2 **A** Approximately \$361,000.

3 **Q** Okay. Who do you submit your bills to?

4 **A** Doerr, which is now they have a subsidiary company
5 which is WIT Legal.

6 **Q** WIT, W-I-T, right?

7 **A** That's correct.

8 **Q** Is WIT a company that represents experts like you?

9 **A** Yes.

10 **Q** How did you come into contact with Doerr or WIT, or
11 whatever it was called at the time?

12 **A** Someone had reached out to me and asked me if I would
13 talk to them because they were looking for some experts, and
14 so I said, sure, I'll talk to them. And they subsequently
15 called me.

16 **Q** Okay. And is it -- is WIT the company that connected
17 us?

18 **A** Well, it was Doerr originally, and now it's WIT.

19 **Q** Okay. So was it Doerr who connected us?

20 **A** Yes.

21 **Q** Okay. Let's just call it WIT since there was a change
22 in name.

23 **A** Right.

24 **Q** Has WIT played any role whatsoever in the preparation
25 of your opinions?

1 **A** No.

2 **Q** Has WIT played any role whatsoever in your testimony
3 in any fashion?

4 **A** No.

5 **Q** Does WIT process your bills?

6 **A** Yes.

7 **Q** Does WIT prepare the engagement paperwork, like
8 engagement letters?

9 **A** Yes.

10 **Q** Does WIT play any other role whatsoever in the
11 preparation of your opinions and your testimony here today?

12 **A** No.

13 **Q** Okay. What's your hourly rate, Mr. Hill?

14 **A** My hourly rate is \$400 an hour.

15 **Q** Is that the rate charged to CVS?

16 **A** No, it's not.

17 **Q** What's the rate charged to CVS?

18 **A** \$675.

19 **Q** And what happens to the portion of that rate above
20 400?

21 **A** That goes to WIT Legal.

22 **Q** Okay. Moving to your opinions, Mr. Hill, what are
23 your opinions primarily based on?

24 **A** My 25-plus years as a DEA special agent.

25 **Q** Have you also re-reviewed laws and regulations?

1 **A** Yes.

2 **Q** Have you looked at documents?

3 **A** Yes.

4 **Q** Have you reviewed testimony?

5 **A** Yes.

6 **Q** Deposition testimony?

7 **A** Yes.

8 **Q** And are you certain of the opinions you're going to
9 give today to a reasonable degree of probability?

10 **A** Yes.

11 **Q** Okay. All right. I hope the wind-up wasn't too long.
12 Let's move to your opinions.

13 Mr. Hill.

14 **A** Yes.

15 **Q** In your opinion, do most doctors write controlled
16 substance prescriptions for legitimate medical reasons?

17 **A** Yes.

18 **Q** What's the basis of your opinion?

19 **A** The basis for my opinions is several things. It's the
20 official information that DEA has put out regarding
21 practitioners writing prescriptions.

22 **Q** Mr. Hill, are you familiar with a 2006 public notice
23 that DEA published in the Federal Register regarding the
24 prescribing of pain medication?

25 **A** Yes.

1 **Q** Does that DEA notice supply one of the bases for your
2 opinion that doctors write controlled substances for
3 legitimate medical reasons?

4 **A** Yes.

5 MR. DELINSKY: I'm showing Mr. Hill Defendant
6 MDL-1096.

7 **Q** Mr. Hill, I'm sorry. Is this exhibit the notice that
8 we just talked about that DEA issued?

9 **A** Yes.

10 **Q** Okay. And Mr. Hill, I'm turning to the page in the
11 top right-hand corner 52719.

12 Do you want me to read the exhibit number to you
13 again?

14 **A** Well, yeah, because I don't see it here, so...
15 Oh, okay. Thank you.

16 **Q** And again, top right corner, 52719.

17 **A** Yes.

18 **Q** All right. And I'd just like to highlight.

19 Do you see where it says, "The number of physicians
20 who prescribe controlled substances in violation of the CSA
21 is extremely small."

22 Do you see that language?

23 **A** Yes, sir.

24 **Q** And below, it says, "DEA recognizes that the
25 overwhelming majority of American physicians who prescribe

1 controlled substances do so for legitimate medical
2 purposes."

3 Do you see that?

4 **A** Yes.

5 **Q** "In fact, the overwhelming majority of physicians who
6 prescribe controlled substances do so in a legitimate manner
7 that will never warrant scrutiny by federal or state law
8 enforcement officials."

9 Do you see that?

10 **A** Yes.

11 **Q** Are these statements part of the bases of your
12 opinion?

13 **A** Yes.

14 **Q** If you could turn to page 52721.

15 We're on the same document, right, Mr. Hill?

16 **A** That's correct.

17 **Q** And here DEA says, "The agency recognizes that nearly
18 every prescription issued by a physician in the United
19 States is for a legitimate medical purpose in the usual
20 course of professional practice."

21 Do you see that?

22 **A** Yes.

23 **Q** Is that a basis of your opinion?

24 **A** Yes.

25 **Q** Do you agree with that statement?

1 **A** Yes.

2 **Q** Now, Mr. Hill, this publication came out in 2006 by
3 DEA, correct?

4 **A** Correct.

5 **Q** Has DEA deviated from that position over the years?

6 **A** No, it has not.

7 **Q** Has that position remained consistent over the years?

8 **A** Yes.

9 **Q** Okay. Without going through all the instances when
10 DEA has repeated that, do you recall reviewing testimony to
11 Congress by acting administrator of the DEA, Mr. Patterson?

12 **A** Yes.

13 **Q** And I'm showing you what's been marked as
14 DEF-MDL-01482.

15 **A** Okay. I have it open, sir.

16 **Q** Okay. And is this the testimony you recall reviewing?

17 **A** Yes.

18 **Q** When was this testimony provided?

19 **A** It was provided on May 8 of 2018.

20 **Q** Okay. And I'm showing you page 32.

21 Do you see page 32?

22 **A** Yes, sir.

23 **Q** And this is where Mr. Patterson says, in sworn
24 testimony to Congress, "I look at the vast majority of
25 doctors: 99.99 percent are all trying to do right by their

1 patients."

2 Do you see that testimony?

3 **A** Yes.

4 **Q** Did you rely on that testimony in preparing your
5 opinions?

6 **A** Yes.

7 **Q** Do you agree with that testimony?

8 **A** Yes.

9 **Q** Mr. Hill, does this mean that it is appropriate for
10 pharmacists to fill the vast majority of controlled
11 substances prescriptions?

12 **A** Yes.

13 **Q** Next opinion, okay? And this opinion concerns the
14 volume of prescriptions.

15 Who is responsible for the volume of prescriptions
16 that are written for prescription opioid medications?

17 **A** Practitioners or other medical professionals.

18 **Q** Okay. Let's stop there.

19 Can you put in lay terms what practitioners and
20 medical professionals are?

21 **A** Yes. Doctors, and you may have some other professions
22 where nurses may be able to do it, depending on what state
23 they're in.

24 **Q** Can we just use "doctors" as shorthand?

25 **A** Yes.

1 **Q** So is it your testimony that doctors are responsible
2 for the volume of prescriptions that are written for
3 prescription opioids in the United States?

4 **A** Yes.

5 **Q** Do pharmacists or pharmacies play any role in how many
6 prescriptions are written?

7 **A** No.

8 **Q** Are pharmacists allowed to write prescriptions for
9 controlled substances?

10 **A** No.

11 **Q** Next set of opinions, Mr. Hill.

12 This concerns corresponding responsibility. And I
13 think you have a few opinions on this that we'll walk
14 through, but let's start -- I want to ask you what
15 corresponding responsibility is, but let's do it in this
16 fashion.

17 And I'm showing you and the Court what has been marked
18 as, and I believe admitted, as P-8163.

19 **A** Yes, I have it open.

20 **Q** Do you recognize P-8163?

21 **A** Yes.

22 **Q** What is it?

23 **A** That is C.F.R. 1306.04, which deals with the purpose
24 in the issue of a prescription.

25 **Q** Is this the regulation that sets forth a pharmacist's

1 corresponding responsibility?

2 **A** Yes.

3 **Q** I'd like to direct your attention to the sentence I'm
4 highlighting that says, "A person knowingly filling such a
5 purported prescription, as well as the person issuing it,
6 shall be subject to the penalties provided for violations of
7 the provisions of law relating to controlled substances."

8 **A** Yes, I see that.

9 **Q** Okay. What is the meaning of this provision?

10 **A** The meaning of this provision means that a pharmacist
11 cannot knowingly fill an illegitimate prescription. And if
12 they do, they would be subject to sanction, either through
13 criminal charges or administrative, but it would make them
14 exposed to it.

15 **Q** Okay. And is that the corresponding responsibility
16 obligation of a pharmacist?

17 **A** Yes.

18 **Q** Okay. For there to be a violation of corresponding
19 responsibility, must the prescription be illegitimate?

20 MR. WEINBERGER: Objection.

21 **A** Yes.

22 THE COURT: Well, hold it.

23 THE WITNESS: Sorry.

24 THE COURT: Overruled.

25 **Q** Let's go through it one more time just for clarity of

1 the record, okay, Mr. Hill?

2 **A** Okay.

3 MR. WEINBERGER: Your Honor, can we be heard
4 on the --

5 THE COURT: Well, all right.

6 (At side bar at 2:57 p.m.)

7 MR. WEINBERGER: Your Honor, I thought the
8 rules that we've been following throughout this trial is
9 that witnesses cannot testify what is a violation of the
10 law.

11 MR. DELINSKY: Your Honor, I think we've got
12 lots of testimony on that from Carmen Catizone, Joe
13 Rannazzisi. They've put their spin on what they believe the
14 legal requirements are. I'm happy to couch it in terms of
15 based on his experience and background if that moves the
16 ball.

17 THE COURT: All right. I think the proper
18 question is what DEA advised people when he's there. He's
19 qualified to testify to that. But you're right, he can't
20 just get up and say this is what the law is.

21 MR. DELINSKY: Okay. Understood, Your Honor.

22 MR. WEINBERGER: Well, Your Honor, can we have
23 a -- I mean, you've said repeatedly that --

24 THE COURT: Mr. Delinsky, why don't you go
25 back and reask the question, all right?

1 MR. DELINSKY: The same way or your way, Your
2 Honor?

3 THE COURT: My way.

4 MR. DELINSKY: Yes, absolutely.

5 (In open court at 2:59 p.m.)

6 BY MR. DELINSKY:

7 **Q** Mr. Hill, based on your experience at DEA and based on
8 what DEA advised registrants, for there to be a violation of
9 corresponding responsibility, must the prescription itself
10 be illegitimate to begin with?

11 MR. WEINBERGER: Objection.

12 THE COURT: Yeah, I'll sustain that.

13 **Q** Mr. Hill, based on your experience, do you have a view
14 as to whether a violation of corresponding responsibility
15 can be established in the absence of an illegitimate
16 prescription?

17 **A** Without an illegitimate prescription, there's no
18 corresponding responsibility that has to be invoked.

19 **Q** And when you say no corresponding responsibility, you
20 mean no corresponding responsibility violation in your
21 experience and in your opinion?

22 MR. WEINBERGER: Objection. Leading.

23 THE COURT: I'm going to sustain that.

24 **Q** Okay. Mr. Hill, what does it mean for a prescription
25 to be illegitimate?

1 MR. WEINBERGER: Objection.

2 (At side bar at 3:00 p.m.)

3 MR. DELINSKY: Your Honor, we have had
4 plaintiff expert after plaintiff experts, including medical
5 doctors, opine on what pharmacists have to do and what are
6 the rules --

7 THE COURT: Wait a minute. We've had
8 pharmacists talk about it, we've had doctors talk about it.
9 He's neither a pharmacist nor a doctor.

10 MR. DELINSKY: But he's Drug Enforcement.

11 THE COURT: Well, if you want to ask him, you
12 know, what DEA pronouncements were or what DEA's advice to
13 pharmacists were, that's fine. But you can't just get him
14 up there and say, well, it's --

15 MR. WEINBERGER: I think that violates the
16 *Touhy* letter that --

17 THE COURT: I'm concerned about all that, too.

18 MR. WEINBERGER: He can testify about his
19 understanding, but he can't testify on behalf of the DEA.

20 MR. DELINSKY: Okay. I'll qualify it that
21 way.

22 THE COURT: I don't know what he's --

23 MR. DELINSKY: I'll qualify it to his
24 understanding and his experience.

25 THE COURT: His understanding, his experience,

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1 when he was there, because that's what it's limited to.

2 MR. DELINSKY: Okay. Yup.

3 (In open court at 3:01 p.m.)

4 BY MR. DELINSKY:

5 **Q** Mr. Hill, based on your understanding and your
6 experience while you were at DEA, what is your understanding
7 of what an illegitimate prescription is?

8 **A** An illegitimate prescription is a prescription that
9 was not written for a valid reason.

10 **Q** Okay. And when you say valid reason, do you mean a
11 valid medical reason?

12 **A** Yes.

13 **Q** Okay. And based on your experience in your time at
14 DEA, and your understanding, is it your opinion that a
15 prescription must be illegitimate for there to be a
16 corresponding responsibility violation?

17 MR. WEINBERGER: Objection.

18 THE COURT: Sustained.

19 **Q** Let's move on.

20 THE COURT: It's time for a break if we're
21 moving to a new subject.

22 MR. DELINSKY: Yeah, that's fine, Your Honor.

23 THE COURT: Ladies and gentlemen, we'll take
24 our mid afternoon recess. Usual admonitions apply. 15
25 minutes, and then we'll pick up with more of Mr. Hill's

1 testimony.

2 (The jury is not present.)

3 MR. DELINSKY: Your Honor, we sat through
4 hours of testimony of witnesses opining on the law. If
5 there was any lesson from plaintiffs' case, it was if there
6 is a red flag, there is a legal obligation to resolve it.
7 That came out of the mouth of expert witness after expert
8 witness and out of the mouths of fact witnesses. And I do
9 believe it's unfair to limit the defense from eliciting
10 opinions in that same general universe.

11 And just because the opinion doesn't track exactly
12 with plaintiffs' opinion but comes at it a different way
13 does not make it of a different ilk or a different category.

14 If these legal issues have been litigated, it's been a
15 little of an unusual feature of this case, but it's
16 difficult to say that plaintiffs were allowed to do it and
17 the defendants can't now --

18 THE COURT: Mr. Delinsky, it's not that you're
19 not allowed to do it. It's what you're trying to bring out
20 with this witness. I mean, a pharmacist can get on and say
21 from my understanding, this is my legal responsibility as a
22 pharmacist. A doctor can do that. He's neither.

23 MR. LANIER: Your Honor, toward that end, I'd
24 like the record to reflect that Dr. Wailes got to testify on
25 this regard for the defendants. Tony Villanueva, Captain

1 Villanueva, was not allowed to testify on this because he
2 wasn't any of those things.

3 MR. DELINSKY: But, Your Honor, this man ran
4 the unit at DEA that investigated pharmacies. He was at DEA
5 enforcing these laws for 25 years. He taught pharmacists.

6 THE COURT: But wait a minute, if you want to
7 ask him what position DEA took in enforcement actions, I
8 guess you can ask it that way. I'm just -- he's neither,
9 he's neither a doctor nor is he a pharmacist. And so he
10 can't testify to what he does or what his understanding of
11 the law is in his practice, like other pharmacists have and
12 other doctors have.

13 MR. DELINSKY: But he's a law enforcement --
14 he's law enforcement.

15 THE COURT: As I said, he can testify to the
16 position that he took and DEA took up until 2014 in
17 enforcing the law.

18 MR. DELINSKY: So can I ask "When you were
19 enforcing the Controlled Substances Act, did you, was it
20 your understanding, your and DEA's understanding?"

21 MR. WEINBERGER: He can't testify -- the *Touhy*
22 authorization does not permit him to testify about what
23 DEA's position was.

24 MR. DELINSKY: Well, Joe Rannazzisi did.
25 That's the problem. There's an inequity here.

1 THE COURT: I don't know what everyone's *Touhy*
2 letters said. Do we have someone from the DOJ here?

3 MR. WEINBERGER: Well, we have the *Touhy*
4 letter.

5 MR. DELINSKY: We told them time and time
6 again that Mr. Hill was testifying. They're not here.

7 MR. LANIER: The DEA specifically disavows
8 what this gentleman has said in his report and in his
9 testimony.

10 MR. DELINSKY: Yeah, just as they did to Joe
11 Rannazzisi.

12 MR. LANIER: No.

13 MR. WEINBERGER: Joe Rannazzisi didn't issue a
14 report. He's not an expert in this case. And he's a
15 pharmacist and a lawyer.

16 THE COURT: He's not received authorization
17 for this report or any future testimony.

18 MR. DELINSKY: Your Honor, that applied to his
19 deposition.

20 MR. WEINBERGER: No.

21 THE COURT: Guess what, this applies to
22 everything.

23 MR. DELINSKY: But, Your Honor, we have
24 provided them ample notice and submitted, told them that
25 we're providing this testimony, and they have provided no

1 response.

2 MR. WEINBERGER: This is the response.

3 MR. DELINSKY: No, this is -- we've told them
4 about their trial testimony.

5 Look, Your Honor, I'm happy to move on.

6 THE COURT: All right. I'll tell you what,
7 you can elicit this testimony, but I'll let the plaintiffs
8 read this *Touhy* letter and say the DEA is expressly
9 disavowing everything this man says. All right, that's
10 fine. It's fair game both ways.

11 MR. DELINSKY: Then we want to put in the
12 *Touhy* letters that have been provided on Joe Rannazzisi as
13 well.

14 THE COURT: Did they expressly disavow and
15 reject everything he said?

16 MR. LANIER: No.

17 MR. DELINSKY: I'd like to see the letter. I
18 just can't recall before his deposition.

19 THE COURT: Well, I mean, if they did, I'm
20 sure you would have put it in.

21 MR. DELINSKY: I guess we object --

22 THE COURT: I mean, you want to start --
23 that's fine, I said that attacking the Federal Government is
24 fair game. It's wide open. FDA, DEA, whatever. So --

25 MR. DELINSKY: We're not attacking the Federal

1 Government, Your Honor.

2 THE COURT: Mr. Delinsky, you want -- if you
3 want him to opine as to what he did and what his
4 understanding of the law was at DEA, that's fine, and I will
5 certainly let the plaintiffs put into evidence this letter
6 and cross-examine him on it.

7 MR. DELINSKY: That's fine, Your Honor.

8 THE COURT: The DEA expressly disavows.

9 MR. DELINSKY: I'm just putting on the record
10 that if there was a double standard, this is it.

11 MR. LANIER: And I'm putting on the record
12 that Captain Villanueva --

13 THE COURT: There isn't a double standard.

14 MR. DELINSKY: There is a double standard. We
15 had witness upon witness upon witness upon witness in
16 plaintiffs' case opining on the law without threat of
17 boilerplate, and *Touhy* regulations were used. And that's
18 just the fact of it. And if those are the rules of the
19 case, those are the rules of the case. We'll move on. But
20 I want the objection noted. That's all.

21 MR. WEINBERGER: We didn't call a DEA witness
22 as an expert.

23 THE COURT: Right. This is different. You've
24 called him as an expert.

25 MR. DELINSKY: So the rules pertaining to a

1 fact witness are more liberal than an expert witness? That
2 makes no sense. It's not right.

3 MR. WEINBERGER: We didn't ask him opinion
4 testimony.

5 MR. DELINSKY: Of course you did. How many
6 times --

7 MR. WEINBERGER: Please don't yell at me.

8 THE COURT: Look, Mr. Delinsky, I will permit
9 you -- you called him as an expert on DEA policy, okay? The
10 plaintiffs didn't, you know, file a *Daubert* motion, so he's
11 qualified to testify to what DEA enforcement policy was over
12 25 years. I have no doubt about that. And he can do that.

13 And so you can ask him as long as you couch the
14 questions that way, you can ask those questions. But the
15 plaintiffs can certainly bring out to impeach him that DEA
16 is expressly disavowing everything he says. All right?

17 So and then you can cross -- you know, you can try and
18 rehabilitate him if you want, but that's -- basically this
19 letter says that they -- they're saying that DEA does not
20 endorse any of his opinions, and any of his opinions do not
21 reflect the opinions of the Department or DEA.

22 So that's fine, but the jury will take it for
23 whatever -- they'll put the weight on it.

24 MR. DELINSKY: But, Your Honor, here's the
25 problem. That is a form letter that is provided that has

1 been given to every DEA -- former DEA official who has
2 testified as an expert in this case.

3 THE COURT: That's the first one that's been
4 presented to --

5 MR. DELINSKY: What if we show you that the
6 letter that was written -- I'm sorry, the *Touhy* response
7 that was written for Mr. Rafalski, who was plaintiffs' DEA
8 expert that they didn't call, they're all the same. So this
9 is using legalese and boilerplate to impeach a witness and
10 it's not fair. That's what they say for everyone. That's
11 nothing personal to Mr. Hill.

12 MR. WEINBERGER: We didn't call Mr. Rafalski
13 as an expert.

14 MR. DELINSKY: But you used him throughout the
15 litigation and you've called him in other cases.

16 MR. LANIER: I have not.

17 MR. DELINSKY: You haven't, Mark, you're
18 right.

19 THE COURT: You called this man as a DEA
20 expert, all right? That's different. So that's fine,
21 you're allowed to have a DEA expert. And I will allow him
22 to answer questions based on his 25 years expertise. But
23 then he can be cross-examined on the fact that DEA is saying
24 that his opinions aren't theirs.

25 And if you want to ask him, well, isn't this a form

1 letter they give to everyone, and if he knows that, he can
2 say that. Maybe it is. I don't know.

3 MR. DELINSKY: Understood, Your Honor. My
4 objection's noted.

5 MR. STOFFELMAYR: Judge, may I ask a question
6 just for my understanding?

7 THE COURT: Go ahead.

8 MR. STOFFELMAYR: Mr. Rannazzisi answered
9 many, many questions termed, you know, "Was it DEA's
10 understanding that" blank, legal conclusion. Would that be
11 permissible? Because whether he's a fact witness or an
12 expert witness, this man would know as well as
13 Mr. Rannazzisi --

14 THE COURT: Yes, I'm allowing -- I am allowing
15 him -- I mean, whether he's a fact witness or an expert, he
16 could testify to what DEA policy was during that 25 years,
17 all right? He can testify to that.

18 MR. WEINBERGER: I actually think he was --
19 the questions that were asked of him by us was what is your
20 understanding, because you objected to him speaking as the
21 DEA.

22 MR. DELINSKY: I mean, Your Honor, I assume
23 you will let me introduce then the *Touhy* letters written on
24 behalf of -- you know, in regards to Joe Rannazzisi,
25 Mr. Prevoznik, Ms. Ashley, all the other DEA people who have

1 provided testimony.

2 MR. WEINBERGER: We didn't call Prevoznik.

3 MR. DELINSKY: Don't matter. This is
4 boilerplate, Your Honor. You're allowing --

5 THE COURT: I don't know if it's boilerplate.

6 MR. DELINSKY: Well, what if we show you it
7 is? It's just not fair.

8 MR. WEINBERGER: It isn't. You submitted his
9 report to them for a *Touhy* authorization for him to testify
10 at trial, and this was their response.

11 MR. DELINSKY: That's what they respond to
12 everybody, every single person.

13 MR. WEINBERGER: Ashley is not an expert.
14 Prevoznik is not an expert. They didn't submit expert
15 reports.

16 MR. DELINSKY: We will show every single
17 expert witness they include the exact same language, and
18 that is form language, and it's unfair impeachment. It's
19 out of bounds. And it can't be, Your Honor, it cannot be
20 that an expert witness can be impeached on that due to the
21 *Touhy* rules when a fact witness like Joe Rannazzisi can't
22 be. That's a fundamental inequity.

23 THE COURT: Well, wait, no. There's a big
24 difference, Mr. Delinsky. Fact witness, you know, you can
25 do whatever you want. If he's an expert witness opining

1 on -- his expertise is what DEA did and didn't do and what
2 their position was, then this specifically says it's not
3 their opinion. That's the difference.

4 MR. DELINSKY: But we weren't asking for DEA
5 opinions. We wanted his opinions, Your Honor. We want to
6 put this as his opinions. We didn't couch him in the report
7 as DEA opinions. We couched them as his.

8 THE COURT: But his opinion, is he worth
9 anything unless he's a DEA expert?

10 MR. DELINSKY: I don't believe that's right,
11 Your Honor. I think his opinion is based on his experience
12 at DEA, but it's an independent opinion.

13 MR. WEINBERGER: Your Honor, this letter which
14 you have, August 12, 2021, specifically says the DOJ
15 received your e-mail -- this is to Kyle Crawford of
16 Mr. Delinsky's firm, August 12.

17 "We received your e-mail and letter containing the
18 expert report of Robert Hill, former DEA employee, and
19 reviewed that report. We understand Mr. Hill's report was
20 served before it was provided to the DEA, and so this office
21 and DEA did not have the opportunity to determine whether
22 the information contained in the report could be shared
23 pursuant to 28 C.F.R. 1621 to 1629, which are also known as
24 *Touhy* regulations.

25 "Accordingly, Mr. Hill did not receive authorization

1 under that section for his report or any future testimony.
2 Nevertheless, this office on behalf of the DEA affirmatively
3 states the DEA does not endorse any of the opinions
4 contained in the report, and that the opinions expressed by
5 Mr. Hill do not reflect the opinions of the Department or
6 the DEA.

7 "Further, the DEA does not attest to the accuracy of
8 the facts, data, or opinions in Mr. Hill's report or future
9 testimony."

10 This was submitted to authorize him to testify per a
11 report that they had never reviewed and gotten
12 preauthorization for, to testify as an expert in this case.

13 That is not the case with respect to any of the fact
14 witnesses that have DEA backgrounds.

15 MR. DELINSKY: Your Honor, we have sent three
16 e-mails this week alone to the Department of Justice to try
17 to get approval for this testimony and to try to get them
18 engaged, and they haven't been engaged.

19 MR. WEINBERGER: That's further evidence
20 that --

21 THE COURT: It's a little late for that.

22 MR. DELINSKY: We told them before, Your
23 Honor. We have been following up and following up and
24 following up. We're not getting anything.

25 THE COURT: In August they said no. That

1 probably meant no.

2 MR. DELINSKY: They didn't say no, they said
3 they didn't endorse.

4 Well, fine, Your Honor. Look, I'm just noting that
5 it's unfair impeachment, the Court's imposing a double
6 standard. I know I've lost. I accept it. I just want my
7 objection noted on the record, that's all.

8 MR. WEINBERGER: And plaintiffs need to state
9 for the record, that's the risk that you took by hiring an
10 expert who was a former DEA employee.

11 MR. DELINSKY: Yeah, and the rules set forth,
12 urged by plaintiffs and set forth by the Court, is if you
13 pay -- if you have Mr. Rannazzisi and you pay his expenses
14 to bring him here, he's providing expert testimony dressed
15 up as a fact witness. But he gets to come here and
16 essentially give expert testimony, that's okay because he
17 gets to dodge the *Touhy* process. But if you do it the right
18 way and you're intellectually honest about it, and you call
19 it what it is, you get punished. And that's the rule.
20 That's the rule. That's the rule.

21 MR. LANIER: Without regard to being yelled at
22 in the process of this from Mr. Delinsky, I will add the
23 following: There were specific questions I tried to ask
24 Mr. Rannazzisi that were deemed off limits because he wasn't
25 an expert, and I was only allowed to ask him questions as a

1 fact witness in his role and what he did as a fact witness.

2 He is a pharmacist, he is a lawyer, and I was limited
3 within the framework of that to those things because he
4 didn't issue an expert report, and I didn't have him here as
5 a retained expert. I wasn't allowed to pay for his time
6 because he was a fact witness and not an expert.

7 I want the record clear.

8 MR. STOFFELMAYR: I want to make sure we're
9 all working with the same facts. I have the Court's ruling,
10 I looked this up, it's not complicated, because there was
11 lots of debate about what Mr. Rannazzisi could or couldn't
12 testify about.

13 And what the Court said is he can testify to his
14 understanding, not what he thinks the rules are, his
15 understanding -- good Lord -- of what the DEA's position was
16 at the time. And there is no reason Mr. Hill couldn't give
17 exactly the same testimony.

18 THE COURT: Well, Mr. Stoffelmayer, I said that
19 Mr. Delinsky could ask those questions.

20 MR. DELINSKY: But you're erecting an
21 impeachment, Your Honor, that only exists --

22 THE COURT: No. Hold it, hold it, hold it.
23 Is there a letter that the DEA sent to the lawyers or to
24 Mr. Rannazzisi like this?

25 MR. DELINSKY: No, because the process was

1 different because they didn't disclose him as an expert,
2 Your Honor.

3 MR. LANIER: Your Honor, not only did we get a
4 *Touhy* authorization for Mr. Rannazzisi to be here, but
5 Mr. Bennett sat over there on behalf of the DOJ during the
6 testimony.

7 THE COURT: I remember that.

8 MR. DELINSKY: And we begged him to be here,
9 Your Honor. We sent Mr. Bennett e-mail after e-mail. It's
10 not our fault that he's not engaging on this. And we can
11 put all those --

12 THE COURT: I think the problem is that you've
13 called him as an expert.

14 MR. DELINSKY: But as an expert based on his
15 experience, Your Honor. You have tried to push me into
16 saying "In your experience at DEA." That's the basis of his
17 opinion, but his opinion is independent.

18 THE COURT: Well, the point is you could have
19 just called him as a fact witness.

20 MR. DELINSKY: Well, why don't I do that now?

21 THE COURT: Well, you've paid him \$300,000.
22 It's late.

23 MR. DELINSKY: Yeah, but the plaintiffs paid
24 Rannazzisi \$900,000, Your Honor, not in this case, but other
25 plaintiffs. That's a tricky line to navigate, Your Honor.

1 THE COURT: Well, you could have brought that
2 out if that was the case.

3 MR. DELINSKY: We did.

4 THE COURT: All right, fine. But he's not.

5 MR. WEINBERGER: We didn't ask him expert
6 opinions about the conduct of CVS --

7 THE COURT: As I said, I am allowing -- the
8 difference is you're calling him as an expert. So, fine,
9 I'm allowing you to ask him those questions for -- based on
10 his expertise and his knowledge what DEA policy was in those
11 25 years, what positions they took in enforcement, what
12 instructions they gave to pharmacists. You can ask him any
13 of those questions. But they can bring out the fact that
14 the Department of Justice says that they're not endorsing
15 any of his opinions, okay? That's a fact.

16 Now, that -- they're not saying that they're
17 disavowing them, that he's wrong. They're just saying that
18 they don't know and they're not endorsing any of his
19 opinions, okay? It doesn't say his opinions are wrong or
20 they're rejecting them. So you're not going to be able to
21 imply that that's what the letter says, because it doesn't.

22 MR. DELINSKY: Okay, Your Honor. I think what
23 we'll do though is we will use that with Mr. Hill, over our
24 objection, so that we are the ones presenting it.

25 THE COURT: Okay. That's fine.

1 (Recess taken at 3:22 p.m.)

2 (Jury present in open court at 3:37 p.m.)

3 THE COURT: Please be seated, ladies and
4 gentlemen. I apologize for that longer than usual break.
5 We had some legal matters we needed to take up.

6 So, Mr. Hill, I want to remind you, you are still
7 under oath, sir.

8 And Mr. Delinsky, you may proceed.

9 MR. DELINSKY: I hope everyone had a good
10 break.

11 BY MR. DELINSKY:

12 Q Let me just take a quick detour, Mr. Hill.

13 Remember we talked about how there's rules that guide
14 your testimony and prohibit you from disclosing information
15 that was internal to DEA, correct?

16 A Correct.

17 Q Do you understand those to be called *Touhy* rules?

18 A Yes.

19 Q Okay. And you recall that my office, Mr. Crawford
20 right there, sent a letter to DEA telling them about your
21 testimony, correct?

22 A Correct.

23 Q I want to go over the response with you that we
24 received from the Department of Justice.

25 As you'll see, this is dated August 12, 2021.

1 You see that?

2 **A** Yes, sir.

3 **Q** Okay. And we're going to go through this.

4 By the way, for the record, this is P-23011.

5 Mr. Hill, you see it's signed on page 2 --

6 THE COURT: I thought it's P-21912.

7 MR. DELINSKY: I have 230 --

8 MR. LANIER: Your Honor, you have the
9 plaintiffs' copy of the letter that I gave you during the
10 break. This is --

11 MR. WEINBERGER: This is it. 23011.

12 MR. DELINSKY: You good, Your Honor?

13 THE COURT: I just want to know what -- mine
14 has a different number, but whatever you've got it, fine.

15 MR. WEINBERGER: We had a different P number
16 on ours.

17 THE COURT: All right.

18 BY MR. DELINSKY:

19 **Q** Mr. Hill, do you see it's signed by Ava Rotell Dustin?

20 **A** Yes.

21 **Q** Do you know Miss Dustin?

22 **A** No.

23 **Q** Is she with DEA?

24 **A** No.

25 **Q** She's with the U.S. Attorney's Office here, correct?

1 **A** Yes.

2 **Q** That sometimes represents DEA or does represent DEA,
3 correct?

4 **A** Yes.

5 **Q** Now, Mr. Hill, we can see -- this is where I'm going
6 to highlight it. This says, "Mr. Hill is not authorized to
7 provide any information regarding any specific nonpublic DEA
8 investigation or activity."

9 Do you see that?

10 **A** Yes.

11 **Q** Is that consistent with your understanding?

12 **A** Yes, sir.

13 **Q** "Classified and classifiable information," is that
14 consistent with your understanding?

15 **A** Yes.

16 **Q** Do you in fact possess classified information from
17 your time at DEA, Mr. Hill? Maybe, maybe not?

18 **A** I guess it would be DEA classified, yes.

19 **Q** And you understand you can't disclose it?

20 **A** Yes.

21 **Q** Mr. Hill, I want to show you something else and ask
22 you about it.

23 Here it says, "This office," the U.S. Attorney's
24 Office, "on behalf of DEA affirmatively states that the DEA
25 does not endorse any of the opinions contained in the report

1 prepared by Mr. Hill."

2 Do you understand that language?

3 **A** Yes.

4 **Q** Would you expect to see that?

5 **A** Yes.

6 **Q** Are you giving opinions on behalf of the DEA?

7 **A** No.

8 **Q** You haven't been at DEA for seven years,
9 approximately, correct?

10 **A** Correct.

11 **Q** There is nothing surprising to you about that
12 language?

13 **A** No.

14 **Q** Is that the kind of boilerplate language you would
15 expect to see?

16 MR. WEINBERGER: Objection, Your Honor.

17 THE COURT: Overruled.

18 **A** Yes.

19 **Q** Okay. Let's go on.

20 It says, this office on behalf of DEA affirmatively
21 states DEA does not endorse your opinions, nor would you
22 expect them to, and that the opinions --

23 THE COURT: The letter doesn't say that, so
24 we're going to -- the jury is to disregard that comment.

25 **Q** All right. It goes on to say, "The opinions expressed

1 by Mr. Hill do not reflect the opinions by the Department,"
2 that's the Department of Justice, "or DEA."

3 Do you see that?

4 **A** Yes.

5 **Q** Does that language surprise you?

6 **A** No.

7 **Q** Does that language in any way whatsoever suggest or
8 indicate that your opinions are wrong?

9 MR. WEINBERGER: Objection.

10 THE COURT: Sustained.

11 **Q** What do you believe that language means?

12 **A** This language means that I am not testifying on behalf
13 of DEA.

14 **Q** Is that your complete understanding?

15 MR. WEINBERGER: Objection.

16 THE COURT: He can testify to his
17 understanding. It's overruled.

18 **A** Could you repeat the question, please?

19 **Q** Is that your complete understanding of what that
20 means?

21 **A** Yes.

22 **Q** And are you certain of that understanding?

23 MR. WEINBERGER: Objection, Your Honor.

24 THE COURT: I have to sustain that,
25 Mr. Delinsky.

1 MR. DELINSKY: Why? I've asked worse ones,
2 Your Honor.

3 Q Mr. Hill, do you know a gentleman named Louis Milione?

4 A I know of him, yes.

5 Q Who is Mr. Milione?

6 A Currently, he is the deputy administrator of DEA.

7 Q Today?

8 A Yes.

9 Q Let's go back to 2015. Who was Mr. Milione?

10 A Mr. Milione replaced Mr. Rannazzisi as the head of
11 Diversion.

12 Q So Mr. Milione had Mr. Rannazzisi's position?

13 A Yes.

14 Q Okay. And then in between the 2015-2016 time frame,
15 when Mr. Milione assumed that position, and today when he's
16 in even a higher position at DEA, did Mr. Milione leave the
17 DEA for a period of time?

18 A Yes.

19 Q Okay. And was he in private industry at that point in
20 time?

21 A Yes.

22 Q Okay. I'd like to show you a similar *Touhy* letter
23 that was written --

24 MR. WEINBERGER: Objection to the -- before we
25 get into describing it, can we see what you're --

1 MR. DELINSKY: Well, I only have it on my
2 phone. I can show my phone. I'm happy to.

3 THE COURT: Well, let's go on the headphones
4 here.

5 (At side bar at 3:43 p.m.)

6 MR. DELINSKY: Your Honor, it has the same
7 language.

8 THE COURT: Well, it may have the same
9 language. I allowed you to -- obviously I allowed you to
10 ask the witness his understanding of a letter that was
11 essentially sent to him, but this letter hasn't been sent to
12 him.

13 MR. DELINSKY: But, Your Honor, if plaintiffs
14 are going to get up and say --

15 THE COURT: Was this person Milione, was he
16 called as an expert?

17 MR. DELINSKY: He was, Your Honor. He was an
18 expert retained on behalf of manufacturer defendants in
19 Track One. He was a testifying expert in Track One.

20 MR. WEINBERGER: But he never testified in
21 Court.

22 MR. DELINSKY: He testified in deposition.

23 MR. WEINBERGER: So what?

24 MR. DELINSKY: And the language is the exact
25 same language, Your Honor. And this is someone who today is

1 the deputy administrator of the DEA.

2 THE COURT: Well, he hasn't received this
3 letter and he's never seen it before.

4 MR. DELINSKY: Could I use it on redirect if
5 Mr. Lanier attempts to suggest that the meaning of the
6 letter is something different?

7 THE COURT: Well, depending on what he asks.
8 I don't know. I haven't seen the letter.

9 MR. WEINBERGER: Neither have we.

10 THE COURT: But I'm not going to let you --
11 showing some letter to someone else, he don't know the
12 circumstances, so I think it's improper.

13 MR. DELINSKY: But Your Honor, it contains the
14 exact same language.

15 THE COURT: It may, but he doesn't know what
16 the circumstances are, and this witness doesn't know it.
17 That's the point. He has no knowledge of Mr. Milione's
18 circumstances.

19 I allowed him to testify about his understanding that
20 the letter was essentially sent to him.

21 MR. DELINSKY: All right, Your Honor. Do I
22 understand your ruling though, that depending on what
23 happens on redirect, that that door may be opened? Because
24 if this is unfairly characterized and suggested as something
25 else that is -- that this language doesn't appear in other

1 letters for other people, including people who are current
2 second-highest ranking --

3 THE COURT: Well, we'll see.

4 All right, Mr. Lanier, you're on notice that
5 apparently a very similar letter was sent to Mr. Milione, so
6 depending on what you ask and how you ask it, it might
7 become relevant.

8 MR. LANIER: I understand, Your Honor. And if
9 it does, then it will allow me to point out that this was
10 Purdue's expert, and I don't think they'd agree with him
11 either.

12 THE COURT: Right. So I don't know why you
13 guys want to get into this, but I'm going to keep the
14 boundaries fair on both sides.

15 (In open court at 3:46 p.m.)

16 BY MR. DELINSKY:

17 Q All right. Moving on, Mr. Hill. Let's go back just
18 one set.

19 In your opinion, based on your experience at DEA, must
20 there be an illegitimate prescription for corresponding
21 responsibility to be violated?

22 MR. WEINBERGER: Objection.

23 MR. LANIER: I withdraw his objection.

24 THE COURT: All right. I was going to
25 overrule it anyway.

1 You may answer.

2 MR. WEINBERGER: Then I'm definitely
3 withdrawing it, Your Honor.

4 MR. LANIER: I beat you to it, Judge.

5 THE COURT: You may answer it, sir.

6 Mr. Delinsky, if it's forgotten, you can ask it again.

7 BY MR. DELINSKY:

8 **Q** Based on your experience at DEA over the course of 25
9 years, for there to be a violation of corresponding
10 responsibility, must the prescription be illegitimate to
11 begin with?

12 **A** Yes.

13 **Q** Can a pharmacist violate corresponding responsibility
14 if the underlying prescription is not illegitimate based on
15 your experience?

16 **A** No.

17 **Q** Let's move on to a different opinion on corresponding
18 responsibility, Mr. Hill.

19 Can corresponding responsibility be exercised through
20 a line of data alone, in your experience?

21 **A** Based on my experience, no.

22 **Q** Based on your experience, must a pharmacist consider
23 information beyond the drug information on the face of the
24 prescription?

25 **A** Yes, they must.

1 **Q** Is it important for a pharmacist to consider human
2 information, such as information the pharmacists can observe
3 about the patient who has presented the pharmacist with the
4 prescription?

5 **A** Yes, they can consider that.

6 **Q** Is it important for a pharmacist to consider on top of
7 the prescription information in the prescription the
8 pharmacist's knowledge of and own history with the patient?

9 **A** Yes, that can be considered.

10 **Q** Is it necessary for the pharmacist in exercising
11 corresponding responsibility to consider her own
12 observations of the patient?

13 **A** Yes.

14 **Q** Is it important on top of the drug information in the
15 prescription or in the data for the pharmacist to consider
16 the patient's medical condition?

17 **A** Yes.

18 **Q** Is it important in exercising corresponding
19 responsibility for the pharmacist to consider her
20 conversations and interactions with the patient?

21 **A** Yes.

22 **Q** Is it important in the exercise of corresponding
23 responsibility for a pharmacist to consider her own
24 knowledge and experience with the prescribing doctor?

25 **A** Yes.

1 **Q** Can any of this information be gleaned from data?

2 **A** I would say no. It would be very rare.

3 **Q** Can any of this information -- well, can most of this
4 information be gleaned from the face of the prescription
5 itself?

6 **A** I would say no.

7 **Q** Would it be fair to characterize this information as
8 the human information?

9 **A** Yes.

10 **Q** And is a critical part of corresponding
11 responsibility, in your experience, the consideration of the
12 human information?

13 **A** Yes.

14 **Q** Let's move on.

15 Mr. Hill, are you familiar with the concept of
16 potential red flags?

17 **A** Yes.

18 **Q** Did DEA commence a formal process to brief pharmacists
19 on the concept of potential red flags?

20 **A** Yes.

21 **Q** When did those presentations begin?

22 **A** The formal would have been the PDACs which started in
23 September of 2011.

24 **Q** Now, that's not to say cases didn't come out before
25 then, correct?

1 **A** Oh, that's correct.

2 **Q** And they may identify some warnings signs, correct?

3 **A** Yes, correct.

4 **Q** But were the PDACs that commenced in September 2011
5 the first systematic and official approach to laying out
6 potential red flags for pharmacists?

7 **A** Yes.

8 **Q** I believe you testified you gave some of these
9 presentations.

10 **A** Yes.

11 **Q** Did Mr. Rannazzisi give some of these presentations?

12 **A** Yes.

13 **Q** Were your presentations similar to Mr. Rannazzisi's?

14 **A** Yes.

15 **Q** Mr. Hill, I'm showing you what's been marked as
16 P-15962. And as a matter of fact, it's not only marked, I
17 believe this is admitted. Okay?

18 And again, the number is 15962.

19 **A** Yes, I have it here.

20 **Q** Do you recognize this document?

21 **A** Yes.

22 **Q** What is this document?

23 **A** This is a document of a presentation that
24 Mr. Rannazzisi gave in May of 2015 at a PDAC that occurred
25 in Norfolk, Virginia.

1 **Q** So is this one of those presentations that you were
2 just talking about, one of those PDAC presentations?

3 **A** Yes.

4 **Q** Okay. Mr. Hill, if you could please turn to -- if you
5 look at the very bottom of the page, there's a lot of
6 numbers, but just go to 10, okay? The last two numbers.

7 **A** Yes, I'm there.

8 **Q** Okay. Now, on this page of Mr. Rannazzisi's slide, he
9 lists potential red flags, correct?

10 **A** Correct.

11 **Q** Okay. Do potential red flags consider combinations of
12 prescriptions or cocktails?

13 **A** Yes.

14 **Q** Do potential red flags include paying cash?

15 **A** Yes.

16 **Q** Do potential red flags include early refills?

17 **A** Yes.

18 **Q** Do potential red flags include individuals driving
19 long distances to visit physicians?

20 **A** Yes.

21 **Q** And, by the way, was this a DEA presentation?

22 **A** Yes.

23 **Q** Okay. Let's go to the next page, Mr. Hill.

24 Do more potential red flags include customers coming
25 into the pharmacy in groups?

1 **A** Yes.

2 **Q** Does it include customers with prescriptions for
3 controlled substances written by physicians not associated
4 with pain management?

5 **A** Yes.

6 **Q** Okay. These are potential red flags; is that correct?

7 **A** That's correct.

8 **Q** Okay. Mr. Hill, could you explain to the ladies and
9 gentlemen of the jury when a cash payment would only be a
10 potential red flag and wouldn't rise to the level of an
11 actual red flag?

12 **A** Well, a cash payment could be a potential red flag,
13 but you would have to look into it, and if you look at where
14 it has -- prior to the Affordable Care Act, where it stated
15 that in the United States you had approximately 50 million
16 Americans that were uninsured or underinsured; so if you
17 don't have insurance, the only way you can receive a
18 prescription is by paying cash for it.

19 **Q** So would that be an instance in which a prescription
20 might be a potential -- a cash payment might not be
21 suspicious at all, would only be a potential red flag?

22 **A** That's correct.

23 **Q** Wouldn't rise to an actual red flag?

24 **A** That's correct.

25 **Q** Okay. When would a prescription written by a doctor

1 who was 25 or 30 miles away only be a potential red flag?

2 **A** Well, it would depend on if the doctor is a specialty.
3 So if you would take this area, for instance, if you have a
4 person that lives far away but they may be going to the
5 Cleveland Clinic for treatment or something, they may live a
6 far distance, but that would be probably the best care for
7 whatever ailment they have.

8 **Q** So that it wouldn't rise to the level of an actual red
9 flag in that instance?

10 **A** No, it would not.

11 **Q** Okay. Who makes the judgment whether a potential red
12 flag rises to the level of actual red flag?

13 **A** It would be the pharmacist that is working the counter
14 when that prescription is presented to the pharmacist.

15 **Q** Is the deciding factor in determining whether a
16 potential red flag rises to actual red flag typically
17 information the pharmacist knows or learns about the patient
18 at the pharmacy counter?

19 **A** That is correct.

20 **Q** If a pharmacist determines that a potential red flag
21 is not an actual red flag, is there any actual red flag to
22 resolve?

23 **A** No, there is not.

24 **Q** All right. Just a few more questions on flags.

25 **A** Okay.

1 **Q** If a prescription contains a potential red flag, in
2 your experience, does that mean the prescription's
3 illegitimate?

4 **A** No, it does not.

5 **Q** If a prescription has an actual red flag, does that
6 mean the prescription is necessarily illegitimate?

7 **A** No, it does not.

8 **Q** And finally, based on your experience, is it necessary
9 for a pharmacy to have a written policy listing every
10 conceivable red flag?

11 **A** No, it is not.

12 **Q** Mr. Hill, is it good practice for a pharmacist to
13 document the resolution of an actual red flag?

14 **A** It's good practice, but it's not required by the CSA
15 or its implementing regulations.

16 **Q** Is it good practice to document the resolution of a
17 flag that's only a potential red flag and doesn't become an
18 actual red flag?

19 **A** I would say there would be no reason to document it if
20 it's not an actual red flag and it's just a potential.

21 **Q** Based on your experience, does the Controlled
22 Substances Act require pharmacists to document the
23 resolution of red flags?

24 **A** No.

25 **Q** Based on your experience, do DEA regulations require

1 pharmacists to document the resolution of red flags?

2 **A** No.

3 **Q** Do either the Controlled Substances Act or its
4 regulations even discuss the documentation of red flags?

5 **A** No.

6 **Q** Do you know what the DEA Pharmacist's Manual is?

7 **A** Yes.

8 **Q** What is it?

9 **A** It's a manual that DEA publishes for pharmacies and
10 pharmacists to give them like a baseline of what's accepted
11 for a pharmacy practice and what they should be doing to
12 stay compliant.

13 **Q** Are you familiar with the DEA Pharmacist's Manual?

14 **A** Yes.

15 **Q** Are you familiar with the 2010 version of the DEA
16 Pharmacist's Manual?

17 **A** Yes.

18 **Q** Does the 2010 DEA Pharmacist's Manual direct
19 pharmacists to document the resolution of red flags?

20 **A** No.

21 **Q** Is there a 2020 DEA Pharmacist's Manual?

22 **A** Yes.

23 **Q** Are you familiar with the 2020 DEA Pharmacist's
24 Manual?

25 **A** Yes.

1 **Q** Does the 2020 DEA Pharmacist's Manual direct
2 pharmacists to document the resolution of red flags?

3 **A** No.

4 **Q** Do you know what DEA registrant letters are?

5 **A** Yes.

6 **Q** What are they?

7 **A** Those were letters that Mr. Rannazzisi sent out to
8 registrants, particularly distributors, that -- making them
9 aware of the issue of the prescription drug abuse problem,
10 as well as what were some of the things they were expected
11 to be in compliance.

12 **Q** Has DEA ever sent a Dear Registrant letter to pharmacy
13 registrants directing pharmacists to document the resolution
14 of red flags?

15 **A** No.

16 **Q** Based on your experience, if a pharmacist resolves a
17 red flag but doesn't write down what she did, does this mean
18 the pharmacist didn't do the work to resolve the red flag?

19 **A** No.

20 **Q** Based on your experience, if a pharmacist does not
21 document the resolution of a red flag, is it fair to just
22 assume that the pharmacist didn't resolve it?

23 **A** No, it's not fair to just assume.

24 **Q** Okay. All right. We're moving on from corresponding
25 responsibility and red flags. I want to talk to you about

1 technology, Mr. Hill.

2 **A** Yes.

3 **Q** Based on your experience, does the Controlled
4 Substances Act provide that pharmacists must operate data
5 programs to review and block doctors?

6 **A** No.

7 **Q** Do any DEA regulations require doctor monitoring
8 programs?

9 **A** No.

10 **Q** Has DEA ever provided official guidance to pharmacies
11 indicating that they should have doctor monitoring programs?

12 **A** No.

13 **Q** Does the Controlled Substances Act, based on your
14 experience, require pharmacies to implement red flag alerts
15 in their computer systems?

16 **A** No.

17 **Q** Do any DEA regulations require the implementation of
18 red flag computer alerts?

19 **A** No.

20 **Q** Has DEA ever provided official guidance to pharmacies
21 indicating that they should implement red flag alerts in
22 their computer systems?

23 **A** No.

24 **Q** Does the Controlled Substances Act provide that
25 pharmacies must use algorithms to monitor their dispensing?

1 **A** No.

2 **Q** Does any DEA regulations require any of these kinds of
3 algorithms?

4 **A** No.

5 **Q** Has DEA ever provided official guidance to pharmacies
6 indicating that they should use algorithms to monitor
7 dispensing?

8 **A** No.

9 **Q** Do you know Mr. Catizone?

10 **A** Yes.

11 **Q** Did you review Mr. Catizone's red flag methodology?

12 **A** Yes.

13 **Q** Do you have opinions on it?

14 **A** Yes.

15 **Q** In your opinion, is Mr. Catizone's methodology
16 correct?

17 **A** No.

18 **Q** Let's discuss why, okay?

19 **A** Okay.

20 **Q** Does Mr. Catizone identify potential red flags or does
21 he identify actual red flags?

22 **A** Potential red flags.

23 **Q** Do the potential red flags that Mr. Catizone
24 identifies in his methodology necessarily require
25 resolution?

1 **A** No.

2 **Q** Does Mr. Catizone also opine that documentation of the
3 resolution of red flags is required?

4 **A** Yes.

5 **Q** Is he correct?

6 **A** No.

7 **Q** Is documentation of the resolution of red flags
8 required by the United States Controlled Substances Act?

9 **A** No.

10 **Q** If the resolution of red flags are not documented,
11 does it mean they weren't resolved?

12 **A** No, it does not.

13 **Q** If corresponding responsibility -- is corresponding
14 responsibility, based on your experience, violated if a
15 pharmacist does not document her resolution of actual red
16 flags?

17 **A** No, it is not.

18 **Q** Final chapter, Mr. Hill.

19 **A** Okay.

20 **Q** And this chapter is about regulation and the
21 regulation of doctors and the regulation of pharmacies.

22 **A** Okay.

23 **Q** Are doctors and are pharmacies -- are doctors who
24 prescribe controlled substances regulated?

25 **A** Yes.

1 **Q** Are pharmacies who prescribe controlled substances
2 regulated? I'm sorry. Bad, bad, bad, bad.

3 Are pharmacies that fill prescriptions for controlled
4 substances regulated?

5 **A** Yes.

6 **Q** Must a doctor who prescribes controlled substances
7 register with the DEA?

8 **A** Yes.

9 **Q** Can DEA suspend or revoke the registration of a doctor
10 for improper prescribing?

11 **A** Yes.

12 **Q** Does DEA take that kind of action?

13 **A** Yes.

14 **Q** Can the United States bring civil and criminal actions
15 against doctors for improper prescribing?

16 **A** Yes.

17 **Q** Does the United States take such actions?

18 **A** Yes.

19 **Q** Mr. Hill, are state medical boards charged with
20 overseeing the practice of medicine in their respective
21 states?

22 **A** Yes.

23 **Q** Must a doctor who prescribes controlled substances be
24 licensed by their state medical board?

25 **A** Yes.

1 **Q** Can a state medical board suspend or revoke the
2 license of a doctor to prescribe controlled substances?

3 **A** Yes.

4 **Q** Does that happen?

5 **A** Yes, it does.

6 **Q** Pharmacies. Must a pharmacy be registered with DEA to
7 dispense controlled substances?

8 **A** Yes.

9 **Q** Must each individual pharmacy location be registered
10 itself?

11 **A** Yes.

12 **Q** So if a company operates a chain of pharmacies, does
13 each individual pharmacy require a DEA registration?

14 **A** If they're going to dispense controlled substances,
15 yes.

16 **Q** Can DEA suspend or revoke a pharmacy's registration
17 for improper dispensing?

18 **A** Yes.

19 **Q** Can the United States bring civil and criminal actions
20 against a pharmacy for improper dispensing?

21 **A** Yes.

22 **Q** Does DEA suspend and revoke licenses of pharmacies for
23 improper dispensing?

24 **A** Yes.

25 **Q** Does the United States bring civil and criminal

1 actions against pharmacies for improper dispensing?

2 **A** Yes.

3 **Q** Does DEA have at its disposal data to assist in
4 identifying pharmacies that may be engaged in improper
5 dispensing?

6 **A** Yes.

7 **Q** What's that data called?

8 **A** ARCOS.

9 **Q** And you've already provided some testimony about
10 ARCOS, correct?

11 **A** Correct.

12 **Q** What information about a pharmacy does the ARCOS data
13 show?

14 **A** It will show the pharmacy location that's ordering, it
15 will show what product they're ordering, the quantity of the
16 product they're ordering, and the date that it was ordered.

17 **Q** Does the ARCOS data show every Schedule II
18 prescription opioid that a pharmacy handles?

19 **A** Yes.

20 **Q** And it shows it by particular drug code and drug
21 class; is that correct?

22 **A** Yes.

23 **Q** Does it show it by date the pharmacy received the
24 drug?

25 **A** Yes.

1 **Q** Does it show the quantity of the drug that the
2 pharmacy is handling?

3 **A** Yes.

4 **Q** Does DEA analyze this data, based on your experience?

5 **A** Yes.

6 **Q** Based on your experience, did DEA use this data to
7 identify pharmacies for review?

8 **A** Yes.

9 **Q** Is this the unit that you oversaw when you were
10 section chief for the Pharmaceutical Investigation section?

11 **A** Yes. At the time it was called the Targeting and
12 Analysis ARCOS Output Unit.

13 **Q** Okay. And lastly, can DEA go to pharmacies and
14 inspect them in person?

15 **A** Yes.

16 **Q** And does DEA do that when it sees reason to?

17 **A** Yes.

18 **Q** Do state boards of pharmacy oversee the practice of
19 pharmacy in their respective states?

20 **A** Yes.

21 **Q** Does this include the Ohio Board of Pharmacy?

22 **A** Yes.

23 **Q** Must a pharmacy be licensed by the State Board of
24 Pharmacy to dispense controlled substances?

25 **A** Yes.

1 **Q** Can a State Board of Pharmacy, like DEA, suspend or
2 revoke a pharmacy's license?

3 **A** Yes.

4 **Q** Does that happen?

5 **A** Yes.

6 **Q** Does the Ohio Board of Pharmacy have data at its
7 disposal on every controlled substance prescription that a
8 pharmacy in Ohio fills?

9 **A** Yes.

10 **Q** What's that data called?

11 **A** It's called the Ohio Automated Rx Reporting System,
12 abbreviation OARRS.

13 **Q** Can state boards of pharmacy use this data to identify
14 pharmacies for review and possible investigation?

15 **A** Yes.

16 **Q** Can state boards of pharmacy inspect pharmacies?

17 **A** Yes.

18 **Q** Do they inspect pharmacies?

19 **A** Yes.

20 **Q** Does the Ohio Board of Pharmacy inspect pharmacies?

21 **A** Yes.

22 **Q** And is that another investigative tool at the disposal
23 of the Ohio Board of Pharmacy?

24 **A** Yes.

25 **Q** Okay.

Hill - (Cross by Lanier)

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1 MR. DELINSKY: Mr. Hill, thank you very much.

2 I pass the witness.

3 THE COURT: Okay. Any questions from
4 Walgreens or Walmart?

5 MR. STOFFELMAYR: No, Your Honor.

6 MS. FUMERTON: No, Your Honor.

7 THE COURT: Thank you.

8 Then, Mr. Lanier, you're up.

9 MR. LANIER: All right. Thank you, Judge.

10 - - - - -

11 CROSS-EXAMINATION

12 BY MR. LANIER:

13 **Q** Mr. Hill?

14 **A** Yes, sir.

15 **Q** I did not get a chance to meet you outside. My name
16 is Mark Lanier. I'm going to be cross-examining you on
17 behalf of the folks of Lake and Trumbull Counties this
18 afternoon. Okay?

19 **A** Okay. Nice to meet you, sir.

20 **Q** It's a pleasure to meet you. And I'm remiss if I
21 don't say thank you for your service to the country, both
22 here and abroad, for the time you were working for the DEA.
23 I appreciate it.

24 **A** Thank you so much.

25 **Q** I've had a chance to check on you through Joe

1 Rannazzisi. He says you're a good man.

2 **A** Joe is a good man too.

3 **Q** I've got a road map for you because there are three
4 areas I want to talk to you about, and here they are.

5 First of all, I did pretty good on your picture,
6 didn't I?

7 **A** Yeah, you did.

8 **Q** I'm going to tell you, I've been sitting up there
9 pretty close, that shirt/tie thing you've got going looks
10 pretty good, at least to a boy from Texas like me, all
11 right?

12 **A** Thank you, sir.

13 **Q** The jury gets tired of seeing me. I've got like two
14 ties that I rotate, and I think that's about it. But you're
15 looking good.

16 **A** Thank you, sir.

17 **Q** All right. We're going to talk about your time with
18 the DEA. We're going to talk about your time at Amneal.

19 Am I saying that right?

20 **A** Yes, sir.

21 **Q** Amneal Pharmaceuticals. And then we're going to talk
22 about your opioid consulting.

23 Okay?

24 **A** Yes, sir.

25 **Q** All right. Let's start, first stop, DEA.

1 Now, at the DEA you gave some speeches, right?

2 **A** That's correct, yes.

3 **Q** I think I've got as Plaintiffs' Demonstrative 128 --
4 are you able to play it? I think I've got about a
5 two-minute cut of one of your speeches, if His Honor will
6 let me play it. It will make you famous here in court.

7 (Video still photo displayed.)

8 And you were looking good too there, man. You've got
9 a good suit going.

10 MR. LANIER: Mr. Pitts, thank you, sir.

11 Time out.

12 **Q** Do you remember giving this speech?

13 **A** Yes. I believe that would have been at the Ravenwood
14 Medical Center in Chardon, Ohio.

15 **Q** Okay. And to set this up, I think you're at kind of a
16 Q&A point, or maybe it was just as you were doing the
17 speech, people would interrupt you with questions. This is
18 about an hour into the evening, and so I want to ask you a
19 couple of questions about this, but first give the jury an
20 idea of what you did.

21 (Video played.)

22 BY MR. LANIER:

23 **Q** Now, you gave that speech and you meant what you said,
24 right?

25 **A** Yes.

1 **Q** And you mean what you say when you say people
2 shouldn't be on opioids longer than six months; that means
3 you're an addict, right?

4 **A** It means that they shouldn't be on it for long-term.
5 If you notice, I also talked about it where I said six
6 months and then I also talked about it being very long-term,
7 yes.

8 **Q** Yeah. And by the same token, you talked about how at
9 the DEA y'all would joke about it being a cocktail. That's
10 where you got more than one opiate and another drug working
11 in tandem, right?

12 **A** Well, yes, but what that was -- what I was talking
13 about there is when you're talking about people that are
14 abusing it with that.

15 **Q** Well, you were talking about, I think, somebody who
16 said, I got a hurt back, I want an OxyContin; that's a good
17 thing. And if I really want a great thing, give me a
18 cocktail, or something like that.

19 **A** Yes, the abuse of it. Yes.

20 **Q** Now, in addition to those kinds of speeches you gave,
21 you also did work with Joe Rannazzisi, correct?

22 **A** Correct.

23 **Q** And that's the Joe Rannazzisi that was in here. He
24 worked I think while you were with him, he was working
25 ultimately in the Office of Diversion Control and was

1 running it, right?

2 **A** That's correct.

3 **Q** Now, you know in addition to those other things, he is
4 also a pharmacist, right?

5 **A** Yes.

6 **Q** And I think also a lawyer, correct?

7 **A** Correct.

8 **Q** And found you to be a great fellow to work with, and
9 you did a lot of good with him, didn't you?

10 **A** I hope that's the way America looked at it.

11 **Q** I think it did. I certainly did, based on everything.

12 Look, I cleaned it hard to look for things that I
13 could stand up and say, hey, you messed up, all right? And
14 you did a good job, and I want to thank you for that.

15 **A** Thank you.

16 **Q** That's sincere.

17 I want to ask you if you agree with some of the things
18 that Joe Rannazzisi said in this case.

19 Let me do it this way. Let me just walk through some
20 of your testimony first, and we'll maybe come back to Joe
21 Rannazzisi.

22 You were the Pharmaceutical Investigation section
23 chief, correct?

24 **A** Correct.

25 **Q** All right. And in that regard, you were there doing

1 that work for about four years?

2 **A** Well, no, not actually four years. It would have been
3 from January of 2009 till June 30 of 2012.

4 **Q** Okay. I rounded up. Three years or so.

5 **A** Yeah. I rounded down. Three and a half.

6 **Q** All right. We'll meet in the middle. Four years.

7 No.

8 But your testimony is that the epidemic in your mind
9 started in 2011, and you premised that on a statement that
10 was made by a Government agency. Fair?

11 **A** Well, I would say that's not fair of actually what I
12 said. What I said was in 2011, that's when the Government
13 labeled it as an epidemic.

14 **Q** Okay. Good. Because the epidemic started before
15 that, didn't it?

16 **A** Well, here's what I would say. Prior to the term
17 "epidemic" being used, a lot of times the only term being
18 used was "misuse" and "abuse" a lot.

19 **Q** Or did you hear the word "crisis" being used?

20 **A** Yeah, I think that was inadvertently used, like
21 interchangeably, yes.

22 **Q** Were you aware of the Congressional hearings about the
23 opioid crisis back in 2002 and 2003?

24 **A** I'm vaguely aware of it, but I don't recall everything
25 that was said.

1 **Q** Are you familiar with how the literature has talked
2 about the phases of the epidemic?

3 **A** In 2002 and '3?

4 **Q** No, at this point in time looking back, how they talk
5 about the different phases of the epidemic.

6 **A** Yes, if you talk -- yes.

7 **Q** And so we can see in scientific literature or the jury
8 has heard through testimony about different phases that go
9 back to the early 2000s. You're not fussing that we've had
10 a problem that long, are you?

11 **A** Oh, no, I'm not fussing that at all.

12 **Q** Okay. Good.

13 Now, in that regard, as we stay with your time with
14 the DEA, you testified about 2011 also being the first time
15 period of red flags.

16 Remember that?

17 **A** Yes. Well, the term actually "red flag," yes.

18 **Q** Did you know that the term was actually used before
19 that?

20 **A** The term may have been used before that, but I'm
21 talking about when we officially set up a program and that
22 we were doing the training with the PDACs.

23 **Q** Okay, good. So you know about the *East Main* case that
24 was decided, *East Main* out of Ohio, I believe, that was
25 decided back in -- written up in 2010 at least. Right?

1 **A** I'm not sure what year, but if you have a copy for me
2 to look at it, but I do know there was an *East Main* case,
3 yes.

4 **Q** All right. Either my daughter, Rachel, or our friend
5 Ms. Fleming will bring that to you.

6 MR. LANIER: Thank you, Maria.

7 **Q** Do you have that in front of you, sir?

8 **A** Yes, sir.

9 **Q** And this is a publication out of the DOJ, Department
10 of Justice, Drug Enforcement Administration, Diversion
11 Control Division.

12 You're very familiar with these, aren't you?

13 **A** Yes.

14 **Q** And you'll see here that this is a Registrant Action
15 that went into the Federal Register October 27 of 2010.

16 Do you see that?

17 **A** Yes, sir.

18 **Q** And you'll see that it talks about on April 23, 2009,
19 there was an order to show cause to this pharmacy in
20 Columbus, Ohio.

21 Do you see where I'm looking?

22 **A** Yes.

23 **Q** And it says, the show cause order alleged that the
24 respondent, owned by a fellow named Fletcher, from September
25 2005 through February 2006 filled 6,619 controlled substance

1 prescriptions, including 4900 issued by a Dr. Paul Volkman.

2 Do you see that?

3 **A** Yes.

4 **Q** And then it talks about how February 10 of 2006 the
5 DEA immediately suspended Volkman's registration.

6 You see that as well?

7 **A** Yes.

8 **Q** Now, if we continue to look at this, it will talk
9 about how the folks directed his payments -- directed his
10 patients to have his prescriptions filled at respondent, who
11 filled them mostly in exchange for cash.

12 See that as a concern?

13 **A** Yes.

14 **Q** And you see it says, 98 percent of his patients filled
15 didn't reside in the Columbus area.

16 You see that as well, right?

17 **A** Yes.

18 **Q** And now, in the process of this, if you'll look,
19 you'll see on page 2, down in the footnotes, "Respondents'
20 experience in dispensing controlled substances-the ALJ found
21 respondent ignored numerous red flags when dispensing"
22 these.

23 Do you see that, sir?

24 **A** Yes.

25 **Q** And among these listed is driving long distances,

1 receiving large volumes in the highest strength, not
2 receiving individualized therapy; same for your cocktail;
3 paying large amounts of cash, and getting multiple narcotic
4 painkillers.

5 Do you see that, sir?

6 **A** Yes.

7 **Q** So isn't it safe to say, as the ALJ concluded, the
8 respondent closed a blind eye to these obvious red flags?
9 Isn't it fair to say that the DOJ was calling in the DEA,
10 y'all were calling these red flags before 2011 certainly,
11 right?

12 **A** They were being called red flags, but what I said
13 occurred in 2011 was when we set up a formal program and
14 structure of training to make the pharmacists aware of what
15 the red flags were.

16 **Q** Well, but y'all had programs and training even before
17 that while you were in Belize. Did you know about those?

18 **A** Yes. There were trainings that occurred, yes.

19 **Q** And whether we call them red flags or whether we call
20 them issues, there were certainly presentations being done
21 back in 2009, for example, that dealt with these issues,
22 correct?

23 **A** Yes.

24 **Q** Now, 2009 was when you were serving the country in
25 Belize; is that right?

1 **A** That's incorrect in 2009.

2 **Q** 2009, where were you?

3 **A** In 2009 I was the section chief of the Pharmaceutical
4 Investigation section.

5 **Q** Ah. Okay. Well, then you would have known about
6 these pharmaceutical industry conferences like the one that
7 you see now in front of you that took place in Portland,
8 Oregon, October of 2009. Correct?

9 **A** Yes.

10 **Q** And you would have known that the trends being
11 identified in pharmaceutical diversion at the time included
12 doctor shopping, right?

13 **A** Yes.

14 **Q** Prescription fraud, correct?

15 **A** Correct.

16 **Q** Internet pharmacies, correct?

17 **A** Correct.

18 **Q** Florida pain clinics were already an item of interest
19 being talked about, true?

20 **A** True.

21 **Q** And in that, it talked about people paying primarily
22 cash, either for their doctor's visits or for their drugs,
23 right?

24 **A** Correct.

25 **Q** It talked about out-of-state patients coming from

1 Maryland, Virginia, Kentucky, Tennessee, and Ohio, for 30 to
2 \$40 a pill, correct?

3 **A** Correct.

4 **Q** And y'all told them indicators or probable cause
5 factors of these problems, didn't you?

6 **A** Yes.

7 **Q** You talked about people using street slang, or large
8 numbers of young patients with chronic pains, remember?

9 **A** Yes.

10 **Q** Talked about prescription intervals inconsistent with
11 legitimate treatment, right?

12 **A** Yes.

13 **Q** And I could go on, but can we at least say that y'all
14 were training pharmacies about these things back in 2009 at
15 least, fair?

16 **A** Yes, we were training registrants. But what I said
17 about the PDACs is when it was a formal training that was
18 specifically for the pharmacies.

19 **Q** Well, sir, wasn't the one that we were just looking at
20 one that was specifically a pharmaceutical industry
21 conference just for the pharmacies?

22 **A** Well, no. If I'm not mistaken, that conference had
23 registrants from all, you know, business models. It wasn't
24 just geared towards pharmacy registrants.

25 **Q** Okay. I pulled it -- my team pulled it off the

1 Internet on the DEA Meetings and Industry Events under the
2 flag of the Pharmaceutical Industry Conferences where they
3 have the PDACs.

4 Do you see that, sir?

5 **A** I see that, but this is not -- this is not a PDAC.

6 **Q** It may be misplaced or misfiled by the DEA?

7 **A** A PDAC would say in the title Pharmacy Diversion
8 Awareness Conference.

9 **Q** Okay. At least we can agree that there were other
10 official efforts to educate on red flags, because the whole
11 reason cases like *East Main* get published is so people will
12 know what their obligations are, right?

13 **A** Well, there was education that was done, and it was
14 making the registrants aware of the issues and concerns, but
15 the term "red flag" was not used a lot at DEA. It was just
16 like the presentation you saw where it said "issues and
17 concerns."

18 **Q** Well, you dealt with a number of investigations. Did
19 you do any of the investigations of CVS? The jury's heard
20 about their settlements, the *Holiday* case, they've heard
21 about Maryland, they've heard about Rhode Island, they've
22 heard about Texas.

23 MR. DELINSKY: Objection, Your Honor. That
24 goes straight to the *Touhy* regulation.

25 MR. LANIER: Not yet, Judge.

1 THE COURT: Overruled.

2 Q I can ask, did you do any work on those, without
3 asking what you did.

4 Did you do any work on those, sir?

5 A Yes.

6 Q Okay. All right. Let's move down the road. We're
7 going to come back to some DEA opinions you've got, but
8 we'll do that under your consulting, because you're not
9 offering your opinions here today on behalf of the DEA.
10 Fair?

11 A Fair.

12 Q All right. Amneal Pharmaceuticals. I don't have a
13 lot there, but I do want to ask you a couple of things about
14 it.

15 While you were at Amneal Pharmaceuticals, you were in
16 charge of trying to help them comply with the law on
17 controlled substances. True?

18 A Yes.

19 Q And then you left. What year did you leave?

20 A July 18, 2018.

21 Q And then it was the next year when Amneal got served
22 with their subpoena from the Federal Government for their
23 actions; is that right?

24 A I don't know when they were served.

25 Q You do know that a criminal investigation was launched

1 on them --

2 MR. DELINSKY: Objection, Your Honor.

3 THE COURT: Overruled.

4 Q -- concerning their marketing, sale, and distribution
5 of controlled substances, right? At least oxymorphone?

6 A When I was at Amneal, Amneal was not manufacturing
7 oxymorphone.

8 Q Okay. But they were doing other opiate drugs, right?

9 A Yes.

10 Q And then ultimately they did get investigated, but
11 that -- I don't think it started until after you left. Am I
12 correct, or did y'all know about it before you left?

13 A When I left Amneal, Amneal was not marketing
14 oxymorphone, so anything dealing with oxymorphone would have
15 occurred after I was gone.

16 Q But did you know about the Government's investigation
17 while you were there, or did they only find out about that
18 afterwards?

19 A I was not aware of any investigation dealing with
20 oxymorphone, because when I was at Amneal, they didn't
21 market oxymorphone.

22 Q All right. Were you aware of any other Government
23 investigation going on to Amneal while you were there?

24 A There was an investigation that I believe was
25 unfounded, where that came from a result of an inspection.

1 **Q** All right. Let's move on from Amneal Pharmaceuticals
2 and let's talk about your opioid consulting for just a bit,
3 okay?

4 **A** Yes, sir.

5 **Q** First of all, you got hired as an expert in this case,
6 true?

7 **A** True.

8 **Q** And, by the way, by my math, WIT, W-I-T, whoever they
9 are -- I guess that stands for "witness" or something, I
10 don't know, "witness service"?

11 **A** I just know them as WIT Legal.

12 **Q** Well, WIT Legal is ripping you off if they're getting
13 275 bucks an hour of your money. Did you know -- we can
14 talk about that later. But I'm just telling you, they're
15 billing 700 bucks an hour for you, and you get what?

16 **A** Well, first of all, I need to disagree with you with
17 that comment, because I believe since I was the one that
18 signed an agreement, obviously I feel whatever they're
19 taking for what they're doing, I didn't have a problem with
20 it. So for you to say that they're ripping me off, I kind
21 of take issue with that, because I'm the one that's doing
22 the work and I don't have a problem with it.

23 **Q** That's fair, and I don't mean it in an offensive way
24 at all. I meant it in a defensive way. I'm telling you
25 that I'm trying to understand, they do no work in this case,

1 and they've made 200 and some-odd-thousand dollars off of
2 the work you've done? Is that right?

3 **A** That's it approximately, yes.

4 **Q** I know that there's one other matter you work on, at
5 least as of the time of your deposition. Is that also
6 through them or is that an independent matter?

7 **A** Well, what do you -- what do you mean, like as far as
8 the opioid litigation or --

9 **Q** No, no, no. Other than opioids, wasn't there another
10 case in your deposition you told us you'd done a little bit
11 of work on?

12 **A** Yes. I did some behind the scenes consulting.

13 **Q** Yeah. Was that independent or was that through them
14 also?

15 **A** That was independent.

16 **Q** Fair enough.

17 All right. Now, I want to talk to you about your
18 consulting opinions in this case. But you were shown by
19 Mr. Delinsky Plaintiffs' Exhibit 23011, which is called a
20 *Touhy* letter. Correct?

21 **A** Yes. Let me pull it back out too.

22 **Q** I've got an extra copy if you need it.

23 **A** No, I should have it here, sir.

24 **Q** Okay.

25 **A** Yes, I have it here in front of me, sir.

1 **Q** Now, you wrote a report in this lawsuit, true?

2 **A** True.

3 **Q** And you served that report, or the counsel did, to us
4 in this lawsuit, true?

5 **A** Well, I don't know how it was served, but I know it
6 was filed, yes.

7 **Q** And you gave a deposition in this case as well,
8 correct?

9 **A** Correct.

10 **Q** Now, you understand you're supposed to get DEA
11 permission before you serve a report, correct?

12 MR. DELINSKY: Objection, Your Honor.

13 THE COURT: Overruled.

14 **A** The counsel did notify the Department of Justice, yes.

15 **Q** My question was, you understand before you issue a
16 report, you're supposed to get DEA permission or DOJ, right?

17 MR. DELINSKY: Your Honor, headset, please?

18 (At side bar at 4:38 p.m.)

19 MR. DELINSKY: Your Honor, there's law that
20 says former employees of the Federal Government do not seek
21 *Touhy* permission. We nevertheless as a practice in this
22 case have been providing notice, but we explicitly disclaim
23 when we do so that we don't think we have to. But this is
24 an intricate legal issue. I believe there may be a Circuit
25 slip on this.

1 THE COURT: It's a fair question. He can say,
2 I don't think I need to. Mr. Lanier can ask the question
3 and the witness can answer it.

4 MR. DELINSKY: I think he should lay the
5 foundation to ask him first if he knows what the legal
6 requirements and legal rules are.

7 THE COURT: All right, Mr. Lanier, you can ask
8 him, do you know if you -- were you required to get, you
9 know, approval, and if he can say I was or I wasn't. I
10 mean, that's a fair question to ask.

11 MR. LANIER: Okay. Thank you.

12 (In open court at 4:39 p.m.)

13 BY MR. LANIER:

14 Q All right. So when you go about doing this, was it
15 your understanding that you're supposed to get Government
16 *Touhy* authorization before you issue a report?

17 A The one thing I'm not sure what you're saying when you
18 said "doing this," what were you referring to?

19 Q Issuing an expert report in a case like this on these
20 issues that touch what the kind of work you did.

21 A Okay. Just wanted to make sure.

22 Q No, no, no, no, no. And that's the right thing. You
23 asked me if I'm unclear, I'll pester you if I think you're
24 unclear.

25 A Okay.

1 **Q** That's a two-way street, all right?

2 **A** Yes.

3 **Q** So my question is, before you issued a report, was it
4 your understanding that you needed to in essence get
5 Government *Touhy* authorization?

6 **A** My understanding was as long as the Department of
7 Justice is notified that a report is going to be done, that
8 was notification.

9 **Q** If you'll look at this *Touhy* letter at the second
10 paragraph -- and by the way, this is from the Department of
11 Justice, the Northern District of Ohio. I guess this
12 courthouse.

13 Do you see where it says, "The Department of Justice
14 and the DEA received your e-mail and letter containing the
15 expert report of Robert L. Hill, a former DEA employee, and
16 reviewed that report."

17 Do you see that?

18 **A** Yes.

19 **Q** And this was sent to the law firm where Mr. Delinsky
20 works, true?

21 **A** Yes.

22 **Q** Then the Department of Justice goes on to say, "We
23 understand Mr. Hill's report was served before it was
24 provided to the DEA, and so this office and the DEA did not
25 have an opportunity to determine whether the information

1 contained in the report could be shared pursuant to," what's
2 known as the "*Touhy* regulations." Right?

3 **A** Yes.

4 **Q** "Accordingly, Mr. Hill has not received authorization
5 under" that "for this report or any future testimony."

6 Do you see that?

7 **A** Yes.

8 **Q** Now, have you in fact been given clearance from the
9 Department of Justice since receiving this letter two months
10 ago, three months ago now, have you received permission or
11 authorization for your testimony?

12 **A** I know that the law firm has reached out to regarding
13 my testimony today, yes.

14 **Q** Yes, you think you got permission?

15 **A** I know that the law firm had been contacted by the
16 Department of Justice regarding my testimony today.

17 **Q** All right. So if the representation has been made by
18 counsel on the record that there's not been any
19 authorization granted yet, is that contrary to what you've
20 been told?

21 **A** The information that I was provided was that when I
22 testify today, someone would be here from the U.S.
23 Attorney's Office in the audience.

24 **Q** So you were not told that not only is someone not here
25 from the Department of Justice, they said they would not be

1 here, and they never gave you an okay to testify. None of
2 that was conveyed to you before you testified?

3 MR. DELINSKY: Objection, Your Honor.

4 THE COURT: Overruled.

5 **A** No.

6 **Q** The letter continues, "Nevertheless, this office, on
7 behalf of the DEA, affirmatively states that the DEA does
8 not endorse any of the opinions contained in the report
9 prepared by Mr. Hill, and that the opinions expressed by
10 Mr. Hill do not reflect the opinions of the Department or
11 the DEA."

12 Did I read that correctly?

13 **A** Yes, sir.

14 **Q** It says, "Further, the DEA does not attest to the
15 accuracy of the facts, data, or opinions in Mr. Hill's
16 report or future testimony."

17 Did I read that correctly?

18 **A** Yes.

19 **Q** And then there's a list of things that you are not
20 authorized to provide, and that list is an A, B, C on page
21 1, and it continues through page 2 down to letter M.

22 Do you see that, sir?

23 **A** Yes, sir.

24 **Q** And I think that counsel was relatively careful about
25 asking you questions that would keep you outside of

1 violating those notes, and I'm going to try and do the same,
2 but I still need to ask you about some of your testimony you
3 have offered here today. Okay?

4 **A** Okay.

5 **Q** Now, you testified about corresponding responsibility
6 to this jury. Remember that?

7 **A** Yes.

8 **Q** And you said, if I got it right, for there to be a
9 violation of corresponding responsibility, the prescription
10 must be illegitimate to begin with.

11 Do you remember that?

12 **A** Yes.

13 **Q** Now, that is not the position of the DEA, true?

14 **A** Well, I can tell you based on my 25 years at DEA, when
15 I was at DEA you had to have an illegitimate prescription
16 for there to be a violation of the corresponding
17 responsibility.

18 **Q** But an illegitimate prescription the way you and
19 Mr. Delinsky were talking about it is a little bit different
20 than what the DEA has said on this position, isn't it?

21 **A** Can you tell me exactly where you're looking?

22 **Q** Yes, sir. I've given you Plaintiffs' Exhibit 42147.
23 It's the *Holiday* case against CVS. Issued an order on June
24 8, 2012.

25 Do you see that?

1 **A** Yes.

2 **Q** You know this, don't you?

3 **A** I know the date, yes.

4 **Q** Well, I mean you know this case, don't you?

5 **A** I'm familiar with the case.

6 **Q** This was a big deal, wasn't it?

7 **A** I'm familiar with the case, yes.

8 **Q** If you will turn to the page that in the top
9 right-hand corner says 62341, I'd like to walk through a few
10 things that are in this case and see if they are consistent
11 or inconsistent with what you claim the DEA position to be.
12 All right?

13 **A** Yes. I'm turning to the page.

14 **Q** All right. Tell me when you get there, and I'll try
15 and direct you where I am on the page.

16 **A** Sir, I'm here.

17 **Q** All right. It's got three columns, right?

18 **A** Yes.

19 **Q** I'm going to go to the bottom left of the first
20 column, down toward the bottom at the start of that
21 paragraph. I'll zoom it in, okay?

22 **A** Yes.

23 **Q** This says the "DEA has interpreted the legitimate
24 medical purpose feature of the corresponding responsibility
25 duty."

1 Do you see where I'm reading?

2 **A** Yes.

3 **Q** And the DEA has interpreted it "as prohibiting a
4 pharmacist from filling a prescription for a controlled
5 substance when he or she either knows or has reason to know
6 that the prescription was not written for a legitimate
7 medical purpose."

8 Do you see that?

9 **A** Yes.

10 **Q** Do you agree that that was the DEA position?

11 **A** Well, yes, because they're saying it has to be an
12 illegitimate prescription, not for a legitimate medical
13 purpose.

14 **Q** And we'll get to what that means in just a moment.

15 "When prescriptions are clearly not issued for a
16 legitimate medical purpose, a pharmacist may not
17 intentionally close her or his eyes and thereby avoid actual
18 knowledge of the real purpose of the prescription."

19 Do you see that, sir?

20 **A** Yes, I do.

21 **Q** And you agree with that as well, don't you?

22 **A** I agree with that, but that's not everything that it
23 covered in this ruling.

24 **Q** I know. We're going to get to more.

25 Look at the next. It says, "Accordingly, a pharmacist

1 or pharmacy may not dispense a prescription in the face of a
2 red flag."

3 Do you see where I'm reading?

4 **A** Yes.

5 **Q** And then it defines red flag. It says it's a
6 "circumstance that does or should raise a reasonable
7 suspicion as to the validity of a prescription."

8 You see where I'm reading?

9 **A** Yes.

10 **Q** And so with that definition of red flag, it says,
11 "accordingly, a pharmacist or pharmacy may not dispense a
12 prescription in the face of a red flag unless she or he or
13 it," because it is the pharmacy itself, right, not the
14 pharmacist, right?

15 **A** It could potentially be "it" could be the pharmacy,
16 yes.

17 **Q** Well, yeah, this started out "a pharmacist or a
18 pharmacy."

19 **A** Yes.

20 **Q** So "unless he or it takes steps to resolve the red
21 flag and ensure that the prescription is valid."

22 Do you see that?

23 **A** Yes.

24 **Q** So corresponding responsibility means, don't
25 dispense -- you may not dispense a prescription in the face

1 of a red flag, something that raises a reasonable suspicion,
2 until you've taken the steps to resolve it and ensure that
3 the prescription is valid. True?

4 **A** That's what it says, yes.

5 **Q** And it goes on to say, "It follows that to show a
6 violation of the corresponding responsibility, the
7 Government must establish, one, the respondent dispensed a
8 controlled substance."

9 Do you agree?

10 **A** Yes.

11 **Q** "Two, a red flag was or should have been recognized at
12 or before the time the controlled substance was dispensed."

13 True?

14 **A** True.

15 **Q** "And, three, the question created by the red flag was
16 not resolved conclusively prior to the dispensing of the
17 controlled substance."

18 Do you see that?

19 **A** Yes.

20 **Q** So violating corresponding responsibility, according
21 to the DEA, is a three-step process, fair?

22 MR. DELINSKY: Objection, Your Honor. This is
23 an ALJ ruling, not the DEA.

24 THE COURT: Overruled. You can ask the
25 question.

1 **A** Fair.

2 **Q** And then it references the *Sun & Lake Pharmacy* case,
3 where it says that it was found there that the "pharmacy
4 violated the corresponding responsibility where it took no
5 steps to resolve red flags prior to dispensing controlled
6 substances."

7 Do you see that, sir?

8 **A** Yes.

9 **Q** And so the idea that a red flag doesn't have -- that
10 corresponding responsibility is only limited to whether or
11 not the prescription's valid, you've got corresponding
12 responsibility issues simply from how you handle red flags,
13 true?

14 **A** You can have corresponding responsibility issues if
15 you don't have -- address the red flags.

16 **Q** Okay. And this is -- the red flags in this case, do
17 you recall what they were?

18 **A** In the Sanford case?

19 **Q** Yes, sir. If you'll look at 62318. I wasn't trying
20 to do a memory quiz on you.

21 **A** Yes, okay.

22 **Q** That's not fair for any of us, especially --

23 MR. DELINSKY: Objection, Your Honor.

24 **Q** -- as we get older.

25 THE COURT: All right.

1 **Q** I've got to look at it, is what I'm telling you.

2 The "Professor Doering, who was an expert witness,
3 identified such red flags as the patient paying for
4 controlled substance prescriptions with cash."

5 Do you see that?

6 **A** Yes.

7 **Q** "A prescriber writes for certain combinations or
8 patterns of drugs."

9 You see that?

10 **A** Yes.

11 **Q** "Multiple patients presenting prescriptions for the
12 same drugs in the same quantities."

13 You see that as well?

14 **A** Yes.

15 **Q** And there are more and more that the jury's heard
16 about throughout the process of this. But can we suffice it
17 to say that the instructions of the DEA are that if you
18 identify -- first you have an obligation to identify red
19 flags, true?

20 **A** I would say "obligation" is maybe a word that I
21 wouldn't use, but if red flags are present, you have to
22 address them.

23 **Q** Well, let's look on page 21 to see what the
24 administrative law judge said about the statements of
25 respondent's employees.

1 " That they manifested a complete abdication of their
2 responsibility to exercise professional judgment before
3 dispensing prescriptions for highly abused controlled
4 substances."

5 Do you see that?

6 **A** Yes.

7 **Q** And it talked about them "dispensing numerous
8 prescriptions when their pharmacists either knew or had
9 reason to know the prescriptions lacked a legitimate medical
10 purpose."

11 Do you see that as well?

12 **A** Yes.

13 **Q** And, by the way, this is why it's the obligation of
14 the company to give the right tools to their pharmacists to
15 be able to do this on a day-to-day basis. True?

16 **A** I would -- when you say it's an obligation, I look at
17 it more based on my experience that corresponding
18 responsibility is invoked and the judgment is based on the
19 pharmacist that is sitting there at the counter.

20 So when you say it's an obligation for the companies
21 to give them the tools, they can have tools, but you have to
22 use your professional judgment and look at the totality of
23 the circumstances of that prescription to invoke your
24 corresponding responsibility.

25 **Q** I agree, you've got both. You've got to have tools

1 and you've got to have a pharmacist who's willing to use
2 them, right?

3 **A** Yes.

4 **Q** All right. And the responsibility for tools I was
5 taking from the CVS comments on page 62323, where the
6 official for CVS testified that "CVS takes its
7 responsibility seriously."

8 And in that regard they said, "We understand it's our
9 responsibility to provide our stores the tools and
10 information that they need to do their jobs on a day-to-day
11 basis and in compliance with state, federal, and local
12 legislation and requirements."

13 They're talking about some actions they've taken that
14 they think help them do that.

15 Do you see that?

16 **A** Yes.

17 **Q** And so in that regard, would you agree with me you not
18 only have to have a pharmacist who's doing their
19 responsibility, but if they're working for a chain pharmacy
20 or another -- an individual pharmacy, they're supposed to be
21 provided the tools to do the work, right?

22 **A** Well, having tools would be helpful, yes.

23 **Q** I mean, for example, you need a computer if you're
24 going to run an OARRS check, right?

25 **A** That would be helpful, but in today's day and age,

1 people also have, you know, a computer in their hand. So,
2 but, yes, having a computer would be helpful.

3 Q Right. And you're aware, maybe you're not aware, are
4 you aware that there's at least for a good period of time
5 where the defendants would not allow their --

6 MR. DELINSKY: Objection, Your Honor.
7 Objection.

8 THE COURT: Yeah, sustained.

9 Q Are you aware of any policies by any of the defendants
10 that their pharmacists were not allowed to use their
11 personal devices at work?

12 MR. DELINSKY: Objection to the use of the
13 word "defendants," Your Honor.

14 Q By any of the defendants, any of the three?

15 THE COURT: Overruled.

16 A I am not familiar with or recall seeing any policies
17 like that.

18 Q Fair enough.

19 All right. Let's talk about the number of good
20 doctors. Most doctors are trying to do the right thing and
21 they're really good, right?

22 A Yes.

23 Q And I don't know if you go 99 percent, 99.5 percent,
24 99.9 percent. I'll say almost every one. But that doesn't
25 change the fact, and you and I both know, that there are

1 some doctors out there who are rascals, true?

2 **A** I would say there are doctors out there that are not
3 doing what they're supposed to do as doctors.

4 **Q** And that's one reason it's so important that the
5 pharmacists do their job appropriately, fair?

6 **A** Well, there's several reasons why the pharmacists
7 should do their job appropriately, but a pharmacist should
8 use their corresponding responsibility to determine if a
9 prescription was issued for a valid legitimate purpose.

10 **Q** Right, because the pharmacists and the pharmacy,
11 that's the last line of defense before these drugs leave the
12 closed system, true?

13 **A** False.

14 **Q** Okay. So if the DEA puts that in their presentations,
15 that the pharmacist is the last line of defense, you would
16 disagree with that?

17 **A** I would disagree with that if the pharmacist is not
18 the one dispensing the controlled substance. If a
19 practitioner is dispensing that controlled substance, they
20 are the last line of defense. If a pharmacist is dispensing
21 it, then, yes, they are the last line of defense.

22 **Q** I agree with you. Thank you for correcting that.

23 When the pharmacist is dispensing the drug, in that
24 event the pharmacist is the last line of defense. Can we
25 agree on that?

1 **A** We can agree.

2 **Q** Great. Thank you, sir.

3 Now, the last thing I want to talk to you about is the
4 need to document.

5 First of all, would you agree that companies need to
6 abide by their own internal policies?

7 **A** A company internal policy does not trump what the CSA
8 or the Federal Regs. So even though a company may say that,
9 yes, you should do this, it's not a legal obligation.

10 **Q** Well, now you're talking about Federal Regulations.
11 What about state regulations?

12 **A** Well, a pharmacy, first of all, they're registered in
13 their state, so they have to be compliant with whatever
14 state regulations they have to to be compliant in that
15 state. And so that has to hold that federal registration.

16 **Q** And are you familiar with the requirement that
17 pharmacies do best practices, what some call it different
18 words, but it's basically standard operating procedures,
19 best practices, whatever it may be.

20 You're familiar with that, right?

21 **A** I'm familiar with the term "best practices," but it
22 doesn't mean that I agree with what all of them may say
23 "this is best practices."

24 **Q** Okay. But when you're testifying about that, you're
25 not testifying about it as a pharmacist, fair?

1 **A** Fair.

2 **Q** You're not testifying about it as a lawyer, fair?

3 **A** Fair.

4 **Q** And you're not testifying about it as a specialist in
5 state boards of pharmacy and what they require, as opposed
6 to the DEA, fair?

7 **A** Fair.

8 **Q** Okay.

9 MR. LANIER: Your Honor, I think that's it.
10 I've come to the end of the road.

11 Sir, thank you again very much. It was a pleasure. I
12 may get a chance to recross you, but if I don't, then I wish
13 you the very best.

14 THE WITNESS: Thank you, sir. And have a good
15 weekend.

16 MR. LANIER: You too, sir.

17 THE COURT: I'd like to go on the headphones
18 for a second, please.

19 (At side bar at 5:02 p.m.)

20 THE COURT: I'm reluctant to keep the jury
21 real late on Friday. My guess is they're going to have a
22 number of questions, and then I would think that both sides
23 would have some. And on the other hand, I hate to have this
24 out-of-town witness stay over the weekend or come back.

25 But I'm thinking -- what I'm suggesting is I'll ask

1 the jury if they have questions now while it's fresh in
2 their mind, they'll present them, and then we'll come back
3 Monday morning and conclude with this witness.

4 MR. LANIER: Whatever you think, Judge.

5 MR. DELINSKY: Your Honor, I think that's
6 fine. Should we see how many question there are? Because
7 it could be that this could be done fast.

8 THE COURT: All right. That's a fair request,
9 Mr. Delinsky. Let's how many questions we've got. Again, I
10 don't know how many that you have of your own.

11 MR. DELINSKY: Not many.

12 THE COURT: All right. All right.

13 (In open court at 5:03 p.m.)

14 THE COURT: Ladies and gentlemen, if anyone
15 has any questions of this witness, I want to see how many
16 we've got to figure out the timing.

17 So if you want to give them to Mr. Pitts, please.

18 (Laughter in courtroom.)

19 That looks like the smallest question on the tiniest
20 piece of paper. We need a magnifying glass for that one.
21 Okay. Well, that won't take long to review that tiny
22 question. It may be a long question on a tiny piece of
23 paper.

24 (Juror question review.)

25 THE COURT: I think we'll go forward then.

1 Okay.

2 - - - - -

3 REDIRECT EXAMINATION

4 BY MR. DELINSKY:

5 **Q** All right. We're going to try to go real fast.

6 **A** Yes, sir.

7 **Q** Most importantly, so the jury can go home, but also so
8 that you can get home to Virginia and see your wife tonight,
9 okay?

10 **A** Yes, sir.

11 **Q** All right. I'm showing you, Mr. Hill, a question that
12 has been put to you by the jury. "Does CVS require their
13 pharmacists to document the resolution of red flags?" As a
14 matter of policy.

15 **A** From the documents that I reviewed, yes.

16 **Q** Okay. And let's just follow up on that.

17 You are absolutely right, CVS requires documentation,
18 correct?

19 **A** Correct.

20 **Q** Is what a policy requires different from what a law
21 requires?

22 **A** Yes.

23 **Q** Okay. Mr. Hill, are prescription opioids FDA
24 approved?

25 **A** Yes.

1 **Q** In your opinion, should they be available for
2 patients?

3 **A** Yes.

4 **Q** Why?

5 **A** Because they have therapeutic value to treat certain
6 ailments.

7 **Q** Is it your opinion that prescription opioids should be
8 prescribed, dispensed, and used as they are supposed to be?

9 **A** Yes.

10 **Q** Okay. Now, we've talked about it. You do not like
11 the prescribing of prescription opioids for long-term
12 chronic pain, correct?

13 **A** Correct.

14 **Q** But you understand doctors do it, correct?

15 **A** Yes.

16 **Q** And do you understand that doctors prescribe
17 prescription opioids for long-term chronic pain in good
18 faith to try to help their patients?

19 **A** Yes.

20 MR. WEINBERGER: Objection, Your Honor.

21 THE WITNESS: I'm sorry.

22 THE COURT: Yeah, I'm going to sustain that.

23 **Q** Mr. Hill, are you aware --

24 THE COURT: The jury is to disregard the
25 answer.

1 **Q** If a doctor, Mr. Hill, treats a patient with long-term
2 prescription opioid therapy for chronic pain --

3 **A** I didn't hear the last part. I'm sorry.

4 **Q** If a doctor treats a patient with long-term opioid
5 therapy for chronic pain and does so in good faith for
6 legitimate medical reasons, does that violate the Controlled
7 Substances Act?

8 **A** No.

9 **Q** Are you aware that the CDC, the United States CDC,
10 issued guidelines in 2016?

11 MR. WEINBERGER: Objection, Your Honor. This
12 is beyond the scope of --

13 MR. DELINSKY: No, it's squarely within the
14 scope, Your Honor.

15 THE COURT: I'll allow the question.

16 **Q** And let me be more specific.

17 Are you aware that in 2016 the Center for Disease
18 Control issued guidelines for the prescribing of opioids for
19 chronic pain?

20 **A** I vaguely remember they had put something out about
21 it, yes.

22 **Q** Okay. Do you recall that that was the first time,
23 this being in 2016, that the Government had put out
24 prescribing guidelines for chronic pain?

25 MR. WEINBERGER: Objection.

1 THE COURT: Yeah, I'm going to sustain that.

2 MR. DELINSKY: Okay.

3 Q Mr. Hill, is it appropriate for a pharmacist to fill
4 prescriptions for chronic pain when a patient is on
5 long-term chronic pain therapy when a doctor writes them in
6 good faith and for legitimate medical reasons?

7 MR. WEINBERGER: Objection.

8 THE COURT: Sustained.

9 Q Based on your experience, is it your opinion -- in
10 your opinion, is it appropriate for a pharmacist to fill a
11 prescription for prescription opioids to treat long-term
12 chronic pain if the prescription was written for a
13 legitimate medical reason?

14 MR. WEINBERGER: Objection.

15 THE COURT: Mr. Delinsky --

16 MR. DELINSKY: Your Honor, everybody wants to
17 go home. I'll just move on.

18 THE COURT: Okay.

19 Q All right. Let's quickly go to this *Touhy* issue that
20 I'm sure the jury's never heard of before about your
21 authorization to testify or not.

22 Do you remember that?

23 A Yes, sir.

24 Q Mr. Hill, do you have any idea what the *Touhy* rules
25 are in detail?

1 **A** Not really. I just know it's that -- by me being a
2 former Government employee, that I have to have
3 authorization. And even if they don't give me authorization
4 and I testify or write a report, there's certain areas that
5 I can't touch on.

6 **Q** Are you aware that there's cases that say former
7 Government employees like yourself don't have to obtain it?

8 MR. WEINBERGER: Objection.

9 THE COURT: Overruled.

10 **A** I'm not aware. I don't know.

11 **Q** Do you know how many communications my office has had
12 with the Department of Justice regarding your testimony?

13 MR. WEINBERGER: Objection.

14 THE COURT: Sustained.

15 MR. DELINSKY: Why? I'm just asking.

16 MR. WEINBERGER: I'm just objecting.

17 THE COURT: I'll allow the question. If he
18 knows.

19 **A** I don't know.

20 **Q** Okay. Do you know what the substance of those
21 communications --

22 THE COURT: That --

23 MR. WEINBERGER: Objection.

24 THE COURT: All right, I'll allow the
25 question, do you know the substance.

1 **A** No, I do not.

2 **Q** But you do know that there have been communications
3 regarding your opinions with the Department of Justice going
4 back a few years, correct?

5 **A** Correct.

6 **Q** Okay. Last questions.

7 Is it appropriate for a pharmacist to fill a
8 prescription written for a legitimate medical reason?

9 **A** You're tailing off. I didn't hear the last part.

10 **Q** I'm sorry, Mr. Hill.

11 Is it appropriate for a pharmacist to fill a
12 prescription that was written for a legitimate medical
13 reason?

14 **A** Yes, it's appropriate.

15 **Q** If a legitimate prescription is filled that was
16 written for a legitimate medical reason, is there diversion?

17 MR. WEINBERGER: Objection.

18 THE COURT: Yeah, it's sustained.

19 **Q** What is the Section of the Code of Federal Regulations
20 that discusses corresponding responsibility?

21 **A** 1306.04.

22 **Q** Does 1306.04 state that legitimate or illegitimate
23 prescriptions can't be filled?

24 **A** No.

25 **Q** Well, which --

1 **A** It states that illegitimate prescriptions should not
2 be filled.

3 MR. DELINSKY: Okay. I have nothing further,
4 Your Honor.

5 THE COURT: All right. I assume no other
6 questions from Walgreens or Walmart?

7 MR. STOFFELMAYR: Correct. Thank you, Judge.

8 THE COURT: Thank you.

9 MR. LANIER: Judge, I have a birthday party to
10 get to.

11 THE COURT: Is it the juror's?

12 MR. LANIER: I'm --

13 THE COURT: No, I can't let you go.

14 MR. LANIER: I was not invited.

15 THE COURT: All right. Even if you were, I
16 couldn't allow you to attend.

17 Okay. Thank you very much, Mr. Hill. You are
18 excused. Safe travels.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: All right. Ladies and gentlemen,
21 we're going to break for the evening. Again, because it's a
22 weekend, I'm reminding you again of the admonitions. Do not
23 read, listen, encounter anything whatsoever in the media
24 about this case or anything close to it. Do not discuss
25 this case with anyone.

1 I want to tell you what -- the schedule for next week,
2 I anticipate that testimony is going to conclude the middle
3 of the week. As you know, Thursday, next Thursday, is
4 Veterans Day. It's a very important federal holiday. The
5 courthouse is closed.

6 When I was a trial lawyer many years ago and I had
7 long cases, I appreciated the opportunity to prepare, have
8 some time to prepare my closing arguments so it could be
9 succinct; I could say the things I wanted to say and leave
10 out the things I didn't need to leave out, and I want to
11 give the lawyers the time to do that.

12 So we're not going to have court next Friday, the
13 12th, so you'll be off Thursday and Friday. I know no one's
14 going to be violently upset to have the day off.

15 And it's my intention, then, on Monday the 15th at 9
16 a.m. we will have closing arguments and the final
17 instructions, and the case will be submitted to you for your
18 deliberations.

19 So have a good weekend, and we'll see you at 9 a.m.
20 where we'll have, Monday, the next defense witness.

21 (Jury excused for the day at 5:14 p.m.)

22 THE COURT: Okay. Everyone be seated just for
23 a second. If you could just close the back door, please.

24 MR. DELINSKY: Your Honor, before we go
25 further, I'd just like to apologize for raising my voice.

1 It's the public defender in me, and sometimes I get very
2 excited about important issues.

3 THE COURT: It's a little bit -- the tone was
4 a little bit harsh, Mr. Delinsky, and some judges would have
5 come down on you hard, but I understood you were passionate,
6 so --

7 MR. DELINSKY: They have at times and you've
8 been patient, and it's not the first time in this trial. I
9 appreciate the Judge's indulgence of it. It's --

10 THE COURT: Okay.

11 MR. DELINSKY: Passionate's the right word,
12 but sometimes it can go a little too much.

13 THE COURT: That was a little bit excessive.

14 MR. WEINBERGER: I thought you were yelling at
15 us, not at the Judge.

16 THE COURT: It was a little excessive, but
17 that's okay.

18 All right. It's sort of late. Let's -- first thing
19 Monday we'll take up exhibits. We have -- so I'd like
20 counsel, over the weekend I'd like to stay current.

21 We have Murphy, Dr. Murphy. The plaintiffs are
22 offering two. I don't know what the defendants have.

23 MS. FUMERTON: Your Honor, we'll work with
24 counsel over the weekend to --

25 THE COURT: We've got Dr. Murphy, Dr.

1 Glickman, and Mr. Hill. So if we could over the weekend
2 work those out, and I'll take those up Monday morning.

3 And then so Monday we'll have -- there are a couple
4 depositions, there were some pharmacists, and possibly
5 another expert, or not? I'm trying to remember who the
6 defendants said they were --

7 MR. STOFFELMAYR: That's correct, Your Honor.

8 THE COURT: Okay. And then -- okay.

9 MR. WEINBERGER: Your Honor, the defendants
10 filed an objection to your jury instruction.

11 THE COURT: There were two filings.

12 MR. WEINBERGER: I didn't see both of them.

13 THE COURT: One came in earlier, one came
14 in --

15 MR. WEINBERGER: Okay. If we can -- I think
16 the deadline you set was for us to respond on Monday.

17 THE COURT: Yes, it was Monday.

18 MR. WEINBERGER: And so can we say by the end
19 of the day Monday; we'll try and get it in earlier?

20 THE COURT: We're going to start looking at
21 them, but, yeah, by the end of the day Monday, because I
22 want to obviously before we break everyone needs to know
23 what the instructions are going to be. So I'm considering
24 what everyone says carefully.

25 MR. WEINBERGER: And can we just confirm with

1 the defendants, which videos do you intend to play? And I
2 think we've got the names of the two of the three
3 pharmacists.

4 MS. FUMERTON: We'll be making our disclosure
5 tonight as we're required. I think there's one other one.
6 So it's Debbie Mack and Ashley, and just one other
7 deposition, but we're filing the list. You'll get it
8 shortly.

9 MR. DELINSKY: And, Pete, I can talk to you.
10 I can supply the missing pharmacist's name after court.

11 MR. WEINBERGER: Okay. All right.

12 THE COURT: So my time computations today were
13 4.25 for the defendants and 1.75 for plaintiffs.

14 Okay. Have a good weekend everyone.

15 (Proceedings adjourned at 5:18 p.m.)

16 * * * * *

17 **C E R T I F I C A T E**

18
19 I certify that the foregoing is a correct transcript
20 of the record of proceedings in the above-entitled matter
21 prepared from my stenotype notes.

22

23 /s/ Lance A. Boardman 11-05-2021
24 Lance A. Boardman, RDR, CRR DATE

25